

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(202)

CR-1766-2019

Date of Decision : January 30, 2023

Prabhu and another

.. Petitioners

Versus

Kanwar Singh (since deceased) and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Amit Jain, Advocate, for the petitioners.

Mr. Sudhir Aggarwal, Advocate, for the respondents.

HARSIMRAN SINGH SETHI J. (ORAL)

In the present civil revision petition, the challenge is to the order dated 29.01.2019 (Annexure P-5) passed by the trial Court by which the application dated 30.08.2018 (Annexure P-3) filed by the petitioners for leading of the additional evidence has been declined.

Learned counsel for the petitioners argues that though it is a conceded position that the objections qua the fact which the petitioners want to prove through additional evidence, was taken in the written statement itself, but merely that the suit is at final stage of the arguments, the rejection of the application by the trial Court is contrary to the settled principle of law as the lis between the parties needs to be adjudicated upon the merits rather than on technicalities.

Learned counsel for the petitioners submits that even the order has been passed without taking into consideration the actual facts, which are clear from the findings recorded in paragraph 6 of the impugned order dated 29.01.2019 (Annexure P-5).

Learned counsel for the respondents submits that application filed by the petitioner for leading additional evidence was nothing but abuse of process of law as the evidence which is sought to be produced now by way of application, was within the knowledge of the defendants/petitioners and rather an objection had already been raised qua the said evidence in the written statement, hence, once despite due opportunities given to lead the evidence, the petitioners-defendants have failed to produce on record the required evidence, application filed by them for production of the additional evidence, has rightly been rejected.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It is a conceded fact that the petitioners while filing the written statement, had taken certain objections qua the consolidation proceedings, hence, it cannot be said that the evidence which is sought to be brought on record by way of additional evidence was not to the knowledge of the petitioners before filing of the said application.

Once the defendants/petitioners were given 22 opportunities within a period of two years to conclude the evidence, it cannot be said that the petitioners did not had due opportunity to produce the evidence which is now being sought to be brought on record by way of additional evidence.

In order to smoothline the procedure for deciding the civil suit, number of opportunities to be availed so as to produce the evidence have

been fixed so that the proceedings attained finality at the earliest, hence, keeping in view the facts of the present case that not only the evidence was closed but the case was fixed for rebuttal argument on which date, the present application for leading additional evidence was filed, no perversity can be found in the impugned order especially when nothing has come on record that the evidence which is sought be placed on record was not in the knowledge of the petitioners or the same could not be produced despite due diligence. In the absence of these two factors, application which is being filed for producing the additional evidence is total abuse of process of law.

Further, though the application is being made for production of additional evidence but the same is vague. No document sought to be produced relating to the consolidation proceedings have been mentioned in the said application so that a consideration could be given whether, the said piece of evidence is related to the controversy in question and is required to be examined so as to decide the suit in question. It is a conceded position that while filing application, no details of the record sought to be produced, have been mentioned. This shows that the only reason behind filing of the application is to delay the proceedings, which cannot be allowed.

Keeping in view the above, no interference is called for by this Court in the impugned order dated 29.01.2019 (Annexure P-5).

Dismissed.

January 30, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No