

CR-1805-2023

-1-

115 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1805-2023
Date of Decision: 22.03.2023

Krishan Lal Petitioner

Versus

Avinash Chand @ Avinash Kumar and others Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Aayush Gupta, Advocate,
for the petitioner.

RAJBIR SEHRAWAT, J. (ORAL)

This is a petition filed under Article 227 of the Constitution of India for setting aside the impugned order dated 21.02.2023 passed by the Civil Judge (Junior Division), Karnal, whereby the application (Annexure P-4) filed for summoning the two witnesses by way of rebuttal/additional evidence has been dismissed.

It is submitted by the learned counsel for the petitioner that the application filed by the petitioner for leading additional evidence has been wrongly declined. The petitioner had even originally cited Teja Singh as a witness to be examined in the suit. Therefore, the said Teja Singh is a material witness for the suit of the plaintiff/petitioner. When the plaintiff/petitioner was leading his evidence, then the whereabouts of the said witness were not available with him. Therefore, the said witness could not even be summoned. In the meantime, the other evidence of the

CR-1805-2023

-2-

petitioner was duly led before the Trial Court. Now even the evidence of the defendants stands completed. With a great effort, the petitioner has now come to know that the said witness Teja Singh stood expired much before filing of the suit. In fact, the said witness had already expired in the year 2004, whereas the suit was filed in the year 2014. Since, now the petitioner has been able to get the details of the legal representatives of the said witness Teja Singh, who is in possession of the relevant record regarding the stamp purchased by the plaintiff/petitioner in the year 1987-88, therefore, he wants to examine the said legal representatives and to produce the record. The petitioner had no reason not to summon the said witness earlier; had whereabouts of the said witness been available with the petitioner. Learned counsel has further submitted that the evidence of the witness is very much material and would help in doing substantial justice. Hence, the petitioner deserves to be granted opportunity to lead the additional evidence, as prayed in the application.

In view of the nature of the order being passed in this case, this Court does not see any requirement of issuing notice to the respondents; at this stage.

Having heard learned counsel for the petitioner and having perused the case file, this Court finds that the Trial Court had granted ample opportunities to the petitioner to lead his evidence by examining the witness Teja Singh. However, at the relevant time, the said witness was not even summoned by the petitioner. At this stage, after the evidence of the

CR-1805-2023

-3-

defendants is completed, the additional evidence could not have been lightly permitted by the Trial Court. Therefore, this Court does not find any *ex facie* impropriety in the order passed by the Trial Court, as such.

However, the law of procedure is handmade to advance the interest of the substantial justice. In the present case, the said witness Teja Singh is stated to have expired about ten years before filing of the suit. Therefore, there can be a possibility of the petitioner not being able to get knowledge of whereabouts of the said witness when the plaintiff/petitioner was leading evidence. Moreover, the defendants can also be granted opportunity to reply to the evidence to be led by the plaintiff/petitioner in the form of the examination of the legal representatives of the said witness Teja Singh. Otherwise also, since the petitioner is the plaintiff in the suit, therefore, his suit would be adversely effected beyond redemption, if he is not granted an opportunity to lead the above said evidence. Hence, it would not be inappropriate, if the petitioner is granted one opportunity to lead the additional evidence prayed by him, however, by putting him under an appropriate financial burden; so as to make him realize his mistake of wasting time of the Court.

In view of the above, the present petition is allowed and the impugned order passed by the Trial Court is set aside. The Trial Court is directed to grant one effective opportunities to the petitioner to lead evidence prayed by the petitioner, however, subject to payment of Rs.20,000/- as costs; to be deposited by the petitioner with the Poor Patients'

CR-1805-2023

-4-

Welfare Fund, PGIMER, Chandigarh, within a period of 15 days from today.

However, it is clarified that the Trial Court shall grant the aforesaid opportunity to the petitioner only on production before that Court the receipt of the costs having been paid by the petitioner, as ordered above.

(RAJBIR SEHRAWAT)
JUDGE

22.03.2023
adhikari

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No