

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**275****CR No.1868 of 2019****Date of Decision : 27.03.2023**

Mohinder Singh

....Petitioner

VERSUS

Superintendent Engineer, Irrigation Department & Ors.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Prashant Bansal, Advocate for the petitioner.

Mr. Kunal Muthreja, AAG Punjab for the respondents.

ALKA SARIN, J. (Oral)

The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 12.03.2019 vide which the application filed by the petitioner for leading additional evidence has been dismissed.

The brief facts relevant to the present *lis* are that in a petition filed by the petitioner herein under Order XXXIX Rule 2-A of the Code of Civil Procedure, 1908, after the closing of evidence of both the parties and at the stage of rebuttal evidence, an application was filed for leading additional evidence. The same was dismissed vide the impugned order dated 12.03.2019. Hence, the present revision petition.

Learned counsel for the petitioner has relied upon judgments of this Court in the cases of **Hans Raj vs. Surinder Kaur & Ors. [2010 (44) RCR (Civil) 782]** and **Gurbaj Singh vs. Shameer Singh & Ors. [2017 (1) PLR 632]** to contend that additional evidence can also be led at the stage of rebuttal evidence and arguments and mere delay or some lapse on the part of

a party or his counsel is not sufficient for rejecting the application for leading additional evidence.

Per contra learned State counsel appearing for the respondents has contended that the additional evidence now sought to be led is only to fill in the lacuna in the case and that the same was well within the knowledge of the petitioner.

In the case of **Hans Raj** (*supra*), it has been held as under :

“From a perusal of the pleadings and after hearing the arguments of learned counsel for the parties, it is definite that in the present case, there is some lapse on the part of the petitioner or his counsel in not leading the entire evidence in support of the plea raised by him in the written statement. In paragraph 6 of the written statement filed by the petitioner, a plea was taken that in the affidavit dated 7.1.1989 filed by respondent No.1-plaintiff in the suit filed by Gian Singh, she admitted that the suit land was not owned by her but was owned by Gian Singh. It is further pleaded in paragraph 5 of the preliminary objection in the written statement filed by the petitioner that he was in possession of the suit land ever since the same was delivered to him in execution of the sale deed dated 1.5.1980. The same was even inspected by Bahadur Singh, the then Sub Divisional Magistrate, Thanesar and detailed report dated 7.4.1988 to that effect was attached. Order dated 10.11.1998 passed in the earlier litigation between Gian Singh and Hans Raj was referred to, which was disposed of in terms of compromise deed dated 6.11.1998, wherein the suit filed by Gian Singh claiming himself to be the owner in possession of the suit land was dismissed. The fact remains that the two documents, which are now sought to be produced by the petitioner in additional evidence, are in fact part of the judicial

record in the earlier litigation between Gian Singh and the petitioner, meaning thereby there is no question of tampering thereof by any of the parties.”

In the present case, the petitioner wants to examine the draftsman who had prepared the site plan. Learned counsel for the petitioner has contended that this is the only evidence the petitioner wishes to lead and that the site plans are already part of the record since the same were filed along with the application under Order XXXIX Rule 2-A CPC. Since this evidence is a material piece of evidence and would have a bearing on the case in hand, merely because there has been some delay or lapse would not be a sufficient reason for disallowing the application.

In view of the above, the present revision petition is allowed. The impugned order is set aside and the application for leading additional evidence stands allowed subject to payment of Rs.30,000/- as costs to be paid to the respondent-Department. Needless to say that the respondents would be given an opportunity to cross-examine the said witness.

The present revision stands disposed off in the above terms. Pending applications, if any, also stand disposed off.

27.03.2023
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO