

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(i) CR-3714-2019 (O&M)

Om Parkash
...Petitioner

VERSUS

State of Haryana and another
...Respondents

(ii) CR-4026-2019 (O&M)

Kala Ram
...Petitioner

VERSUS

State of Haryana and another
...Respondents

Date of Decision: October 31, 2023

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Arpendeep Narula
for the petitioners.

Ms.Ambika Luthra, Addl. Advocate General, Haryana
for the respondents-State.

ARCHANA PURI, J.

These are two revision petitions filed by the petitioners (who were plaintiffs before the Court below) to assail the orders dated 02.05.2019 passed by learned lower Appellate Court, whereby, applications filed by the respondent No.2 (who was defendant No.2 before the Court below) for leading additional evidence in the appeal, were allowed.

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The essential background fact, as culled from the paperbook are as follows:-

That, initially, petitioners-plaintiffs had filed a suit for declaration, thereby, challenging the letter dated 07.10.2017 issued by respondent-defendant No.2, vide which, ration supply to the Depots of the petitioners-plaintiffs has been ordered to be stopped, due to excess lifting of the goods and misappropriation of the goods, in violation of provisions of PDS Control Order, 2009.

In fact, it was also averred in the plaints that petitioners-plaintiffs had always abided by the rules and regulations of the Department and they had never violated terms and conditions of the Department, in any manner. But however, respondents-defendants had stopped the ration supply to the Depot by the petitioners-plaintiffs and also threatened not to supply the ration. In these circumstances, the relief of declaration and mandatory injunction was sought.

In reply, respondent-defendant No.2 had taken the plea that one Bobby s/o Mohan Lal had filed a complaint dated 26.08.2016 to the Food Minister, whereupon, enquiry was assigned to Sh.K.K.Bishnoi, Deputy Director, Head Quarter, by the then Addl. Chief Secretary, State of Haryana, Department of Food, Civil Supplies and Consumer Affairs. Bobby had also filed CRM No.43362 of 2016, titled as 'Bobby vs State of Haryana and others', before this Hon'ble Court, under the provisions of Section 482 Cr.P.C., vide which, he requested to conduct enquiry and to take action for embezzlement of crores of rupees by misappropriating huge quantity of wheat/rice and other articles, meant for distribution through Fair Price Shops

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of Government of Haryana, in District Sirsa. Sh.K.K.Bishnoi filed his report dated 20.09.2017 regarding the distribution of the ration for the period January 2016 to December 2016 and on the basis of the said report dated 20.09.2017, the competent authority of Directorate of Food Civil Supplies and Consumer Affairs vide its letter dated 04.10.2017, directed the District Food Civil Supplies and Consumer Affairs Controller, Sirsa, to not only register a criminal case against 70 persons, including the petitioners-plaintiffs but also to take action against them under PDS Control Order, 2009. It was only in compliance of the aforesaid direction that FIR No.806 dated 10.10.2017 under Sections 120-B, 409, 420, 467, 468, 471 IPC and Section 7 of the Essential Commodities was registered against the aforesaid persons.

Further, in compliance of the directions issued vide order dated 04.10.2017, the respondent-defendant No.2 had issued letter dated 07.10.2017 to the petitioners-plaintiffs, vide which, the supply of ration to their Depots was ordered to be stopped, on account of excess lifting of the goods and misappropriation of the same and for violation of provisions of PDS Control Order, 2009.

Moreover, it was averred that the aforesaid letter issued by respondent-defendant No.2 to the petitioners-plaintiffs, stopping the supply of ration to their Depots, is in compliance of the letter dated 04.10.2017, which is based on the detailed enquiry report dated 20.09.2017 submitted by Sh.K.K.Bishonoi, who was appointed as Enquiry Officer. In this manner, the supply of the Depots has been stopped, in due course and is in discharge of statutory duties of the answering defendants.

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After framing of issues and recording of the evidence, the suits of the petitioners-plaintiffs were decreed and it was observed by learned Court below as herein given:-

“XXXXX Further, nothing has been placed on record by the defendants to show that plaintiff was ever called by the Inquiry Officer K.K.Bishnoi or any opportunity of hearing was given to the plaintiff either by the Inquiry Officer K.K.Bishnoi before giving his enquiry report or by the answering defendants before issuing the impugned notice. Therefore, it is established that before issuance of notice in question the principles of natural justice were never adhered to. XXXX”

Feeling aggrieved, the respondents had filed the appeal before learned lower Appellate Court and also filed application for leading additional evidence, to bring on record inquiry report dated 20.09.2017, bills dated 07.04.2016, 09.04.2016 and 12.04.2016 and copy of the FIR, on the submission that due to clerical omission, these documents could not be produced before the Court below, even though, the detailed mention thereof, has been made in the written statement as well as in the affidavit of Satish Kumar, examined at the behest of the respondents-defendants.

In reply, the petitioners-plaintiffs had taken the plea that the respondents-defendants want to fill the lacunae in the case. Even, further a plea was taken about enquiry to have never been conducted, as alleged and that no notice was issued to the petitioners-plaintiffs, before conducting of the enquiry by Sh.K.K.Bishnoi. Besides the same, it was also stated that the petitioners-plaintiffs did not lift the excess wheat from the Confed Department.

The arguments were heard on the main appeal together with the application for additional evidence and vide impugned order dated

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02.05.2019, the application for additional evidence was allowed and only one opportunity was granted to the respondents-defendants (appellant therein), for the said purpose.

Now, by way of present revision petitions, the petitioners-plaintiffs have assailed the aforesaid order.

Under the scheme of Code of Civil Procedure 1908, whether oral or documentary, it is the trial Court before whom the parties are required to adduce their evidence. But in three exceptional circumstances, the evidence can be adduced before Appellate Court, as provided under Rule 27 Order 41 CPC, which reads as herein given:-

“27. Production of additional evidence in Appellate Court. – (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if –

(a) The Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) The Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause.”

From the opening words of sub-rule (1) of Rule 27, quoted above, it is clear that the parties are not entitled to produce additional evidence, whether oral or documentary, in the appellate court, but for the three situations mentioned above. The parties are not allowed to fill the lacunae at the appellate stage. It is against the spirit of the Code, to allow a

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party to adduce additional evidence without fulfillment of either of the three conditions mentioned in Rule 27. In the case at hand, application was filed at the appellate stage, to bring on record, the inquiry report, which forms the basis of the letter dated 07.10.2017, which has been challenged by the petitioners-plaintiffs, by way of filing of the suit. Now, it is to be seen, as to whether, the third condition i.e. one contained in clause (b) of sub-rule (1) of Rule 27 is fulfilled or not.

In *K.R. Mohan Reddy v. Net Work Inc.1, 2007(4) RCR (Civil)*

770, it was held as under: -

“19. The appellate court should not pass an order so as to patch up the weakness of the evidence of the unsuccessful party before the trial court, but it will be different if the court itself requires the evidence to do justice between the parties. The ability to pronounce judgment is to be understood as the ability to pronounce judgment satisfactorily to the mind of the court. But mere difficulty is not sufficient to issue such direction.....”

In *North Eastern Railway Admn. v. Bhagwan Das, 2008(3)*

RCR (Civil) 165, it was observed as under:-

“13. Though the general rule is that ordinarily the appellate court should not travel outside the record of the lower court and additional evidence, whether oral or documentary is not admitted but Section 107 CPC, which carves out an exception to the general rule, enables an appellate court to take additional evidence or to require such evidence to be taken subject to such conditions and limitations as may be prescribed. These conditions are prescribed under Order 41 Rule 27 CPC. Nevertheless, the additional evidence can be admitted only when the circumstances as stipulated in the said Rule are found to exist.....”

In *N. Kamalam (dead) and another v. Ayyasamy and another,*

2001(4) RCR (Civil) 193, while interpreting Rule 27 of Order XLI of the

Code, it was observed as herein given:-

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“..... the provisions of Order 41 Rule 27 have not been engrafted in the Code so as to patch up the weak points in the case and to fill up the omission in the court of appeal – it does not authorize any lacunae or gaps in the evidence to be filled up. The authority and jurisdiction as conferred on to the appellate court to let in fresh evidence is restricted to the purpose of pronouncement of judgment in a particular way.”

In Union of India v. Ibrahim Uddin and another, 2012(4) RCR

(Civil) 727, it was held as herein given:-

“49. An application under Order 41 Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find out whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced.....”

Learned counsel for the petitioners submits that now, by virtue of reception of the additional evidence, the respondents intend to fulfill the lacunae of their claim and precisely, on this account, the application for additional evidence, ought not to be allowed. Even, qua conducting of the enquiry, it is submitted that no notice was ever issued to the petitioners, nor they were associated and therefore, the enquiry report, as such, cannot be taken into consideration.

It is essential to make mention that order dated 07.10.2017, copy whereof is Annexure P-2, which has been challenged by way of the civil suit by the petitioners-plaintiffs, reads in verbatim, as herein given:-

‘As per inquiry report received through Head Office Letter

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no.F.G.-6-2017/19881 dated 04.10.17, Sh.Om Parkash son of Lal Chand, Depot Holder in village Darbi PDS-155, District Sirsa by lifting of more ration than sanctioned requirement, has misappropriated it. By doing to, Depot Holder has violated P.D.S. Control Order 2009 and Essential Commodities Act 07.10.1955, hence, supply of Essential Commodities to you has been suspended with immediate effect.'
(Similar order was passed in the case of Kala Ram)

Close perusal of this order reveals about the same to have been made on the basis of the enquiry report, received through letter dated 04.10.17.

In the suit/plaint, the petitioners-plaintiffs states about the order to be null and void and also about themselves to be adhering to the rules and regulations of the Department, but there is no mention made, in the plaint, with regard to the enquiry having been conducted or not or that they had been associated or not, in the enquiry.

However, in the written statement, there is categorical stand taken about manner of conducting of the enquiry, initiated on the basis of the complaint made before the Food Minister and on the basis of the enquiry, conducted by Sh.K.K.Bishnoi, further orders were passed and FIR was registered.

Copies of testimonies of the petitioners as well as Satish Kumar, examined by the respondents have been brought on record. Perusal of the same reveals about the petitioners, in their affidavits, have not made mention about the enquiry having conducted or not and that they having associated in the same or not. However, they admitted a suggestion to be correct that on the basis of the departmental enquiry, FIR No.806 dated 10.10.2017 under Sections 409, 420, 467, 468, 471, 120-B IPC and Section

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7 of the Essential Commodities Act was registered against them at Police Station City. Even, Satish Kumar, Clerk, who had been examined at the behest of respondents-defendants, in his affidavit, has categorically stated about the manner of enquiry having initiated and conducting of the same and submission on the enquiry report and also about the action initiated against various persons, including the petitioners, on the basis of the said enquiry report.

Such being the fact situation, it is obvious that the enquiry report, was already in existence and reference to the same was made, not only in the pleadings, filed at the behest of the respondents, but also, in the affidavit of Satish Kumar, witness, so examined by the respondents and such being so, the plea of clerical omission being malafide, as now submitted by learned counsel for the petitioners, is bereft of merits. The omission seemingly is bonafide. But anyhow, the enquiry report was in existence prior to the institution of the suit. Very true, as so pointed out by learned counsel for the petitioners that the applications for additional evidence cannot be allowed to clear up shortcomings of evidence, but at the same time, if the need is there for the reception of proposed documents for rendering decision more satisfactory to the conscience of the Court, then it falls within the parameters of the requirement of Order 41 Rule 27 CPC, as it forms substantial cause for rendering substantial justice.

In the light of the aforesaid observations, the enquiry report and the FIR lodged, in pursuance of the enquiry report, are essential to adjudicate the dispute between the parties. In view of the above, learned lower Appellate Court has correctly allowed the applications for leading

additional evidence. Thus, the impugned orders does not call for any interference.

Hence, both the revision petitions sans merit and are hereby dismissed.

October 31, 2023
Vgulati

Whether speaking/reasoned
Whether reportable

(ARCHANA PURI)
JUDGE

Yes
Yes/No