

CR-3476-2022

2023:PHHC:095374

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CR-3476-2022 (O&M)

Date of Decision: 26.7.2023

Jagjeet Singh @ Jagat Singh

....Petitioner

VERSUS

Hoshiar Singh and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Mani Ram Verma, Advocate,
for the petitioner.

Mr. Rajnish K. Gupta, Advocate,
for respondent No.1.

KARAMJIT SINGH, J.

Present revision petition has been filed by the petitioner/defendant against order dated 18.7.2022 (Annexure P-3) passed by the Court of Additional Civil Judge, Senior Division, Hansi whereby an application filed by respondent No.1 seeking permission to open sealed envelope containing original agreement to sell, sent back by the FSL and to allow the respondent to get the said original agreement to sell dated 24.8.2013 exhibited on record by adducing evidence, has been allowed.

2. The brief facts of the case are that the respondents filed suit for possession by way of specific performance of agreement to sell dated 24.8.2013 against the petitioner. During the pendency of the said civil suit, the original agreement to sell was sent to FSL for purpose of its examination as the same was required in a criminal case having FIR No.110 dated 12.3.2016 registered under Sections 420, 406 IPC at Police Station Sadar, Hansi. In the meantime, issues were framed and the suit was fixed for

evidence of the respondents/plaintiffs and respondent No.1 tendered affidavit in his examination-in-chief but his cross-examination was deferred. In the meantime, FSL returned the original agreement to sell in a sealed cover to the learned trial Court on which respondent No.1 filed an application to open the said sealed cover with permission to tender the original agreement to sell in evidence so that it could be properly exhibited in evidence. The said application is allowed by the learned trial Court vide impugned order and PW1 i.e. respondent No.1 is allowed to get his further examination-in-chief recorded qua the documents contained in sealed envelope.

3. The petitioner being dissatisfied with the said order, has filed the present revision petition.

4. Counsel for the petitioner submits that examination-in-chief of respondent No.1 who appeared in the witness box as PW1 is already recorded; that there is no provision under CPC to allow respondent No.1 to produce the document in question in his further examination-in-chief. Counsel for the petitioner further submits that proper application could have been filed to recall respondent No.1 for his further examination for purpose of tendering/proving original agreement to sell. So, prayer is made that the present petition be allowed.

5. On the other hand, counsel for respondent No.1 submits that at the relevant time, when examination-in-chief of RW1 was recorded, original agreement to sell was not available in the Court record and when the said document was received back from FSL in a sealed cover, appropriate application was moved to tender the original agreement to sell in evidence of respondent No.1. It is further submitted that there is no illegality in the

impugned order, as per which, permission has been given to produce original agreement to sell in further examination-in-chief of respondent No.1.

6. I have considered the submissions made by the counsel for the parties.

7. Counsel appearing on behalf of the parties have not disputed the fact that at the time when respondent No.1 was examined-in-chief, original agreement to sell in dispute was not available on the judicial file and it was later on, received in a sealed cover from FSL concerned. The document in question is a material document and is required to be tendered into evidence for just decision of the case and the learned trial Court rightly gave opportunity to the respondent to produce and prove the said document by way of further examination-in-chief of the petitioner. There may be no provision for re-opening or recalling of evidence. However, the learned trial Court can invoke its inherent power under Section 151 of CPC in appropriate case to recall of witness for further examination as has been held by this Court in CR-5639-2012; **Santosh Kumar Berry v. Nirmala Devi and others**; decided on 25.9.2012.

8. For the foregoing reasons, the present petition is hereby dismissed being devoid of merits.

(KARAMJIT SINGH)
JUDGE

July 26, 2023

Paritosh Kumar

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No