

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

CR-5430-2019

Date of Decision : 12.10.2023

M/s Marvel Dyers & Processors Pvt. Ltd.

..... Petitioner

Versus

M/s Bhandari Hosiery Exports Ltd. and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

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

Mr. Rahul Sharma, Advocate for the respondents.

VIKRAM AGGARWAL, J

1. The present revision petition preferred under Article 227 of the Constitution of India assails the order dated 17.08.2019, passed by the Court of Civil Judge (Junior Division), Ludhiana, vide which the application filed by the present petitioner for producing documents by way of additional evidence was dismissed.

2. The petitioner filed a suit (Annexure P-1) for recovery of Rs.23,16,569 against the respondents-defendants alongwith interest pendente lite and future interest @ 18% per annum.

3. During the pendency of the suit, an application (Annexure P-4) was moved to produce five documents by way of additional evidence. These documents were attested copies of minute books of the petitioner company for the

years 2014-2015 and 2016-17, attested copy of certificate of incorporation of the petitioner Company, certificate under Section 65-B of the Evidence Act and attested copy of the balance sheets of the petitioner company for five financial years. It was averred that the petitioner-plaintiff had examined its authorized representative as PW1 who had produced certain documents on record. However, due to inadvertence and oversight, certain documents could not be produced. Under the circumstances, the application was moved stating that the documents sought to be produced by way of additional evidence were vital for the proper adjudication of the matter.

3(i) The application was resisted by way of a reply (Annexure P-5) in which it was averred that the petitioner-plaintiff could very well have produced the said documents at the time when its evidence was going on.

3(ii). By way of the impugned order dated 17.08.2019, the application was dismissed leading to the filing of the present revision petition.

4. I have heard learned counsel for the parties.

5. Learned counsel for the petitioner-plaintiff strenuously urged that the trial Court gravely erred in dismissing the application for additional evidence. It was submitted that the trial Court did not consider that the documents which were sought to be produced by way of additional evidence were essential for the just decision of the case. Learned counsel submitted that the trial Court adopted a hyper technical approach and erroneously rejected the application. In support of his contention, learned counsel placed reliance upon judgments of Coordinate Benches of this Court in **Rameshwar and others versus Om Parkash and others,**

CR No.3569 of 2014, decided on 12.02.2015 and Krishan Lal versus Avinash Chand @ Avinash Kumar and others, CR-1805-2023, decided on 22.03.2023.

6. On the other hand, learned counsel for the respondents-defendants submitted that there is no illegality in the order passed by the trial Court and that the petitioner-plaintiff could very well have produced the documents during the time when its evidence was going on. Learned counsel submitted that the petitioner-plaintiff could not prove that these documents were not in their knowledge when its evidence was being led and infact it is the specific case of the petitioner-plaintiff that these documents were with the petitioner-plaintiff but could not be produced in evidence due to inadvertence and oversight. Learned counsel submitted that inadvertence and oversight can never be made a ground to permit the petitioner-plaintiff to produce the documents by way of additional evidence. Learned counsel placed reliance upon the judgments of Hon'ble Supreme Court of India in *Sunder Lal and Son Versus Bharat Handicrafts Private Ltd. 1968 AIR (SC) 406, K.K.Velusamy versus N.Palanisamy 2011 (2) R.C.R. (Civil) 875, Bagai Construction through its Proprietor Lalit Bagai versus Gupta Building Material Store (2013) 14 Supreme Court Cases 1*, judgment of Allahabad High Court *in Markandey Singh & another Versus Awadhesh Narayan Singh & another 2016 (4) CivCC 17 : 2017 (1) LJR 316* as well as the judgments of Coordinate Benches of this Court in *Munna Lal Versus Sadhu Ram and others 2009 (33) R.C.R. (Civil) 388 and Nathu Ram Prem Chand Versus Jagroop Singh 2014 (60) R.C.R. (Civil) 629.*

7. I have considered the submissions made by learned counsel for the parties.

8. As has been noticed by the trial Court, the suit was filed on 18.03.2015. Evidence of the petitioner-plaintiff commenced on 27.02.2017 and the same was closed by the petitioner-plaintiff on 20.04.2018. The case was then fixed for evidence of the respondents-defendants and the same was closed by orders on 22.07.2019. At the stage of rebuttal evidence and arguments, the application for additional evidence was filed. The trial Court got swayed by the fact that photocopies of some of the documents sought to be produced by way of additional evidence were already on the case file and under the circumstances, the petitioner-plaintiff could very well have produced the said documents earlier. It was observed that if such kinds of applications are allowed, it will open a Pandora's box leading to the filing of such applications on regular basis by the party which would further delay the cases that are lingering on for several years.

9. In the considered opinion of this Court, the trial Court adopted a hyper-technical approach without actually going into the merits of the case. No doubt, as per the own case of the petitioner-plaintiff, the documents were well within the knowledge of the petitioner-plaintiff. However, the application was moved by the petitioner-plaintiff in July, 2019 just after the evidence of the respondents-defendants had been closed by orders. The petitioner-plaintiff, therefore, did not take undue time in moving the application. Even otherwise, the petitioner-plaintiff would not be interested in delaying the case. No doubt, under normal circumstances, oversight and inadvertence would not be valid grounds for grant of permission for producing the additional evidence. However, in the present case, the documents which are sought to be produced by way of additional evidence viz. copies of minute book of the petitioner company for the years 2014-2015 and 2016-17, attested copy of certificate of incorporation of the petitioner

Company, certificate under Section 65-B of the Evidence Act and attested copy of the balance sheets for five financial years, appear to be essential for the just decision of the case since it was a suit for recovery. If the petitioner-plaintiff is denied the permission to produce this evidence, it may suffer an irreparable loss. Even otherwise, no prejudice shall be caused to the respondents-defendants because there has not been any undue delay on the part of the petitioner-plaintiff. In the case of **Krishan Lal versus Avinash @ Avinash Kumar and others** (supra), a Coordinate Bench of this Court, while observing that the law of procedure is handmade to advance the interest of the substantial justice, allowed a similar application. A similar view was also taken in the case of **Rameshwar and others versus Om Parkash and others** (supra). Infact, such cases would have to be decided as per their own facts and no straitjacket formula can be laid down. There can be broad principles which can be applied to the facts of each case. In so far as the present case is concerned, this Court is of the considered opinion that the application should have been allowed.

10. I have gone through the judgments relied upon by learned counsel for the respondents-defendants. In most of these cases, the application for additional evidence was dismissed and the orders were upheld by the Coordinate Benches of this Court holding that inadvertence and oversight could not be a ground for permitting additional evidence. In the case of **K.K.Velusamy versus N.Palanisamy** (supra), the Hon'ble Apex Court held that the Court can permit fresh evidence if evidence was relevant to render justice and its non-production earlier was for valid reasons. The Hon'ble Apex Court held as under:-

“14. Neither the trial court nor the High court considered the question whether it was a fit case for exercise of discretion under section 151

or Order 18 Rule 17 of the Code. They have not considered whether the evidence sought to be produced would either assist in clarifying the evidence led on the issues or lead to a just and effective adjudication. Both the courts have mechanically dismissed the application only on the ground that the matter was already at the stage of final arguments and the application would have the effect of delaying the proceedings.

15. The appellant - defendant has taken a consistent stand in his reply notice, written statement and evidence that the agreement of sale was executed to secure a loan of Rs.150,000, as the respondent insisted upon execution and registration of such agreement. If after the completion of recording of evidence, PW1 and PW2 had admitted during conversations that the amount paid was not advance towards sale price, but only a loan and the agreement of sale was obtained to secure the loan, that would be material evidence which came into existence subsequent to the recording of the depositions, having a bearing on the decision and will also clarify the evidence already led on the issues. According to the appellant, the said evidence came into existence only on 27.10.2008 and 31.10.2008, and he prepared the applications and filed them at the earliest, that is on 11.11.2008. As defendant could not have produced this material earlier and if the said evidence, if found valid and admissible, would assist the court to consider the evidence in the correct perspective or to render justice, it was a fit case for exercising the discretion under section 151 of the Code. The courts below have not applied their minds to the question whether such evidence will be relevant and whether the ends of justice require permission to let in such evidence. Therefore the order calls for interference.

16. We may add a word of caution. The power under section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional

evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs. If the application is allowed and the evidence is permitted and ultimately the court finds that evidence was not genuine or relevant and did not warrant the reopening of the case recalling the witnesses, it can be made a ground for awarding exemplary costs apart from ordering prosecution if it involves fabrication of evidence. If the party had an opportunity to produce such evidence earlier but did not do so or if the evidence already led is clear and unambiguous, or if it comes to the conclusion that the object of the application is merely to protract the proceedings, the court should reject the application. If the evidence sought to be produced is an electronic record, the court may also listen to the recording before granting or rejecting the application.”

11. The judgments of the Hon’ble Apex Court in the cases of **Sunder Lal and Son Versus Bharat Handicrafts Private Ltd. and Bagai Construction through its Proprietor Lalit Bagai versus Gupta Building Material Store** (supra) would not apply to the facts of the present case. In the present case, the application is not mischievous or frivolous. The object of the application also does not appear to protract the proceedings. The petitioner-plaintiff did have an opportunity to produce the evidence earlier but did not do so but at the same time the documents said to be produced on record are essential for the just decision of the case.

In view of the aforementioned facts and circumstances, the present revision petition is allowed. The order 17.08.2019, passed by the Court of Civil Judge (Junior Division), Ludhiana is set aside and the application for additional evidence is allowed. The trial Court is directed to give one effective opportunity to the petitioner-plaintiff to produce the additional evidence at its own risk and costs. This shall, however, be subject to payment of ₹15,000/- as costs to the respondents-defendants.

(VIKRAM AGGARWAL)
JUDGE

12.10.2023

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