IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R. No.6185 of 2019 (O&M)
Date of Order:17.10.2023

M/s Jai Bajrang Khal Bhandar

.Petitioner

Versus

M/s Pankaj Kumar & Company ..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Yogsimant Attri, Advocate, for
Mr. Rajinder Goyal, Advocate
for the petitioner.

Mr. Navmohit Singh, Advocate
for the respondent.

ANIL KSHETARPAL, J

1. The petitioner before this court filed a suit for recovery of Rs.6,40,662/- on the basis of entries in the books of accounts. The suit was dismissed by the trial court on 07.12.2018.

2. The learned counsel representing the respondent submits that the plaintiff during the pendency of the suit made two attempts to produce the evidence which is sought to be produced in additional evidence before the First Appellate Court. However, on both the occasions, the application submitted by the petitioner was dismissed.

3. As is evident the First Appellate Court has dismissed the application filed by the petitioner for permission to lead additional evidence in order to prove the signature of the defendant (respondent) on value added tax form submitted in the Sales Tax Office. The plaintiff also wants to examine Handwriting and Finger Print Expert to prove the signatures of the defendant on the aforesaid form. On a bare perusal of the judgment passed by the trial court, it is evident that the suit of the plaintiff has been dismissed

on the ground that the plaintiff has failed to examine the clerk of the office of Sales Tax and prove the signatures of the defendant on the aforesaid form.

4. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

5. The learned counsel representing the petitioner contends that the petitioner made two attempts to produce the aforesaid evidence before the trial court, one by filing an application for additional evidence and second at the stage of rebuttal, however, on both the occasions he want not granted opportunity to lead evidence. He submits that the petitioner's case shall be covered by Clause (a) of Rule 27 of Order XLI CPC.

6. On the other hand, the learned counsel representing the respondent contends that the plaintiff cannot be permitted to fill the lacuna as his application for additional evidence has been dismissed by the trial court and the same was filed at a belated stage.

7. This court has considered the submission of the learned counsel representing the parties and analyzed their arguments.

8. Order 41, Clause (a) of Rule 27 of Order XLI CP**C** enables the trial court to permit production of additional evidence if the court from whose decree the appeal has been preferred, has wrongly refused to admit the evidence**.** In the present case, the plaintiff made attempts on two different occasions to produce the evidence. The evidence sought to be produced by the plaintiff is part of the official record. The aforesaid evidence is relevant in determining the case on a just manner. Moreover, the rules of procedure are handmaids of justice. The First Appellate Court has erred while dismissing the application on the ground that the plaintiff has failed to prove that despite exercise of due diligence, the plaintiff was not in

knowledge thereof. In fact, the plaintiff filed the application before the trial court for production of the aforesaid evidence on two different occasions.

9. It has also come in evidence that the plaintiff in the trial court deposited the diet money and process charges for summoning the official from the Sales Tax office, however, the court closed his evidence.

10. The learned counsel representing the petitioner submits that in the prayer clause the plaintiff has only prayed for examining the Handwriting and Finger Print Expert.

11. On a careful reading of paragraph 3, 5 and 6 of the application and the prayer clause, it is evident that the plaintiff has prayed for examining the official along with the record from the Sales Tax department.

12. Keeping in view the aforesaid facts and disucssion, the order under challenge is set aside. The application is allowed. The plaintiff is permitted to lead additional evidence by examining the official from the Sales Tax Department as well as the Handwriting and Finger Print Expert to prove his case.

13. Needless to observe that the defendant shall have the opportunity to lead evidence to counter the evidence lead by the plaintiff.

14. All the pending miscellaneous applications, if any, are also disposed of.

October 17, 2023 **(ANIL KSHETARPAL)**
nt **JUDGE**

Whether speaking/reasoned :YES/NO
Whether reportable :YES/NO