

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

Civil Revision No. 6194 of 2023(O&M)

Date of Decision: 02.11.2023

Azad Singh

...Petitioner

Versus

Jora Singh

...Respondent

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

**Present:- Mr. Suryakant Gautam, Advocate
For the petitioner.**

KARAMJIT SINGH, J.

1. The present revision petition has been filed by the petitioner/defendant for setting aside order dated 01.08.2023 (Annexure P-3) passed by the Court of Civil Judge(Sr.Divn.), Panipat whereby an application filed by the petitioner for permission to lead additional evidence to produce record relating to telephonic conversations which took place between the parties in March, April and May of 2018, has been dismissed.

2. The brief facts of the case are that respondent filed suit for possession by way of specific performance of agreement to sell dated 07.04.2017 and *majid* agreements dated 06.06.2017, 08.08.2017, 08.09.2017 executed by the petitioner/ defendant in his favour. The suit is being contested by the petitioner who took plea that the alleged writing is relating to loan which was availed by the petitioner from the respondent. After framing of issues, both the parties lead their evidence. The petitioner filed an application for additional evidence to produce the record regarding telephonic conversations which took place between the parties on 28.03.2018, 06.04.2018 and 29.05.2018 with regard to compromise relating

to aforesaid loan transaction. The said application was contested by the respondent and was dismissed by the learned trial Court vide impugned order dated 01.08.2023.

3. The counsel for the petitioner while assailing the impugned order, *inter alia*, contends that from the very beginning the petitioner has pleaded that the transaction in question was a loan transaction and that the petitioner never agreed to sell his property to the respondent. It is further contended that in order to establish his defence the petitioner wants to produce the telephonic conversations which took place between the parties regarding compromise with regard to aforesaid loan transaction. The counsel for the petitioner further submits that earlier the petitioner failed to produce the said evidence, as the mobile phone wherein the aforesaid conversation was recorded was lost on 03.04.2022 and thereafter the SIM card was traced and now is available with the petitioner. It is further submitted that the aforesaid evidence is necessary for the just decision of the case but the learned trial Court without appreciating all these aspects, dismissed the application filed by the petitioner for additional evidence in an illegal manner.

4. I have considered the submissions made by counsel for the petitioner.

5. The aforesaid civil suit was filed by the respondent on 17.05.2018 and most of the telephonic conversations which the petitioner intends to produce by way of additional evidence took place prior to filing of the said civil suit. While filing his written statement the petitioner remained silent with regard to aforesaid telephonic conversation. The counsel for the petitioner also admitted during arguments that the application for additional

evidence was moved at the stage when the suit was fixed for rebuttal evidence and both the parties have already concluded their evidence. There is nothing on record to prove that mobile phone wherein the aforesaid telephonic conversation was recorded, got missing on 03.04.2022 and later on the concerned mobile phone/ SIM card was got recovered. In the given circumstances, the trial Court rightly dismissed the application filed by the petitioner for leading additional evidence while observing that the parties cannot lead evidence beyond their pleadings and that too at a belated stage when the parties have already concluded their evidence. It also appears that the application for additional evidence was filed without any due diligence on the part of the petitioner.

6. Consequently, the present petition is hereby dismissed being devoid of merits.

(KARAMJIT SINGH)
JUDGE

02.11.2023

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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No