

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

CR-3770-2017

Reserved on 11.12.2023

Date of decision: 26.02.2024

Amit Mishra

...Petitioner

Versus

Rohtash

...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by: Mr. Inderjit Sharma, Advocate for the petitioner.

Mr. Sanjay Vij, Advocate for the respondent.

KARAMJIT SINGH, J. (ORAL)

1. This revision petition has been filed by the petitioner/defendant seeking setting aside of order dated 21.04.2017 Annexure P-1 passed by the Court of Civil Judge (Junior Division), Gurugram whereby an application filed by petitioner under Order 16 Rule 6 CPC read with Section 151 CPC was dismissed in Civil Suit titled as Rohtash Vs. Amit Mishra.

2. The brief facts of the case are that respondent Rohtash filed suit for specific performance and permanent injunction against the petitioner on the basis of agreement to sell. The suit is being contested by the petitioner. The learned trial Court settled the issues and then respondent concluded his evidence and even the petitioner also led his evidence. At that stage, the petitioner filed an application under Order 16 Rule 6 CPC read with Section

151 CPC to summon the official of the police control room to produce the transcript of the complaint lodged on 14.07.2011 by office bearer of Perna Cooperative Group Housing Society by making telephone call at No.100. The said application was contested by the petitioner. The learned trial Court after hearing counsel for the parties dismissed the said application vide impugned order Annexure P-1.

3. Being aggrieved, the petitioner has filed the present revision petition.

4. I have heard the counsel for the parties.

5. The counsel for the petitioner has *inter alia* contended that respondent filed false suit against the petitioner. That actually respondent is having no concern with the suit property and its possession was never handed over to the respondent. That on 14.07.2011, the respondent tried to take forcible possession of the flat in dispute and when the respondent was attempting to do so, security guards of Perna Cooperative Group Housing Society informed about the same to office bearer of the said society who further informed about the same to local police control room by making telephone call at No.100. That to this effect, DW-10 Yogender Prasad Yadav also deposed in the Court while appearing in the witness box. That in order to substantiate the testimony of DW-10, petitioner intends to summon the concerned record maintained by the police, which is required for proper adjudication of the dispute between the parties. However, the learned trial Court dismissed the concerned application in a casual manner without appreciating the issue involved in the dispute. So prayer is made that the present petition be allowed.

6. The present petition is resisted by the counsel for the respondent who submits that no such incident as alleged by the petitioner had taken place on 14.07.2011. It has been further submitted that the petitioner is alleging about the aforesaid incident dated 14.07.2011 since beginning and this plea was also taken by the petitioner in his written statement as well as counter claim. However, the petitioner did not make any effort to produce the concerned record at the earliest, when he was provided proper and effective opportunity to lead his evidence. The counsel for the respondent has further contended that the trial Court rightly dismissed the concerned application which was filed at belated stage, without any explanation with regard to delay in its filing.

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

8. Admittedly, respondent Rohtash filed suit for specific performance and permanent injunction against the petitioner/defendant. After settlement of issues, respondent concluded his evidence and even the petitioner also examined 10 witnesses to rebut the evidence led by the petitioner. Finally, the evidence of the petitioner was closed on 23.02.2017 and then the suit was fixed for final arguments and at that stage, petitioner filed an application to summon official of the police control room to produce the transcript of complaint made on 14.07.2011 by the Prerna Co-operative Group Housing Society on No.100 against the respondent, to corroborate testimony of DW-10 Yogender Parshad Yadav, President of the said cooperative society, in order to show that respondent never came into possession of the suit property and tried to take forcible possession of the

same on 14.07.2011.

9. The petitioner intends to adduce additional evidence by invoking provisions of Order 16 Rule 6 CPC, at the arguments stage and the petitioner was in knowledge of the said evidence from the very beginning. Further no sufficient cause is shown by the petitioner for not producing the said evidence at the earlier stage of the suit. It is not the case of the petitioner that at the earlier stage, the said evidence was not available to the petitioner despite due diligence. Hence in the absence of any satisfactory reason for non production of the aforesaid evidence at the earlier stage, despite availing ample opportunity to produce evidence, no case for interference is made out in the present case.

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

26.02.2024
Yogesh

(KARAMJIT SINGH)
JUDGE

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