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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-1767-2019 (O&M)

Date of Decision : 27.11.2024

Kartar Singh

... Petitioner(s)

Versus

Mahabir Singh

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rakesh Dhiman, Advocate for the petitioner.

Mr. Rajesh Lamba, Advocate for the respondent.

ALKA SARIN, J. (Oral)

1. The present revision petition has been preferred under Article 227 of the Constitution of India for challenging the order dated 07.03.2019 whereby the application filed by the plaintiff-petitioner seeking permission to lead additional evidence has been dismissed.

2. Brief facts relevant to the present *lis* are that the plaintiff-petitioner herein filed a suit for recovery of Rs.5,50,000/- on the ground that damage had been caused to his house by the neighbour i.e. the defendant-respondent herein while he was constructing his house. Written statement was filed. Initially after the plaintiff's evidence had been closed, the defendant-respondent during his evidence filed an application for appointment of a Local Commissioner which was allowed vide order dated 16.02.2017 (Annexure P-5). The Local Commissioner submitted his report. Objections (Annexure P-15) were filed by the plaintiff-petitioner herein to the Local Commissioner's report. It is an admitted case that the Local

Commissioner was also cross-examined by the plaintiff-petitioner herein. Subsequently after the defendant-respondent had closed his evidence, an application (Annexure P-11) was filed by the plaintiff-petitioner for taking sample of the construction regarding class of the construction of the Southern wall of the house of the plaintiff-petitioner and existing state of affairs of the said wall, which application was dismissed. Aggrieved by the same, a civil revision being CR No.1145 of 2019 was filed and the plaintiff-petitioner withdrew the said petition on 15.02.2019 with liberty to avail his remedies in accordance with law. Thereafter, the present application (Annexure P-17) for additional evidence was filed which has now been dismissed vide the impugned order dated 07.03.2019. Hence, the present revision petition.

3. Learned counsel for the plaintiff-petitioner would contend that since the defendant-respondent filed an application for appointment of a Local Commissioner, which was allowed vide order dated 16.02.2017 (Annexure P-5) and the Local Commissioner was unable to answer some of the questions put in the cross-examination, hence, the necessity for filing the present application.

4. *Per contra*, the leaned counsel for the defendant-respondent would contend that the application for appointment of a Local Commissioner was allowed vide order dated 16.02.2017 (Annexure P-5) and the plaintiff-petitioner herein chose not to challenge the said order and it attained finality. Thereafter, the Local Commissioner was appointed who submitted his report. The plaintiff-petitioner filed his objections to the report of the Local Commissioner (Annexure P15). Subsequently, the plaintiff-

petitioner also cross-examined the Local Commissioner. Thereafter an application (Annexure P-11) was filed by the plaintiff-petitioner for taking sample of the construction regarding class of the construction of the Southern wall of the house of the plaintiff-petitioner and existing state of affairs of the said wall. The said application was dismissed vide the order dated 10.01.2019 (Annexure P13). The said order was challenged in CR No.1145 of 2019 which was withdrawn on 15.02.2019 with liberty to avail his remedies in accordance with law (Annexure P-14) and thereafter the present application (Annexure P-17) for additional evidence has been filed. The learned counsel has further contended that the argument now being raised by the learned counsel for the plaintiff-petitioner is not even a ground mentioned in the application for leading additional evidence.

5. I have heard the learned counsel for the parties.

6. In the present case the plaintiff-petitioner filed a suit for recovery on the ground that damage had been caused to his house during the construction work carried out by the defendant-respondent. The defendant-respondent during the course of his evidence had filed an application for appointment of a Local Commissioner which was allowed vide the order dated 16.02.2017 (Annexure P-5). The said order attained finality as the plaintiff-petitioner chose not to challenge the said order. The the Local Commissioner gave his report qua which objections (Annexure P-15) were filed by the plaintiff-petitioner. When the Local Commissioner was examined, the plaintiff-petitioner cross-examined the said Local Commissioner. The argument of the learned counsel that since the application for appointment of Local Commissioner was allowed and the

Local Commissioner was unable to answer the questions put in cross-examination, hence, the necessity to file the present application, deserves to be rejected. The grounds which have been mentioned in the application for leading additional evidence read as under :

“3. That to find out the reasons of cracks occurred to his house the applicant/ plaintiff got inspected the house in question by Er. Anil Kumar Kulshrestha, M.Tech Civil & Municipal Engg., Sector-51, Gurugram who inspected the house in question. On 19.02.2019 at the request of the applicant-plaintiff and then submitted his detailed report along with photographs which are attached herewith for kind perusal of the Hon'ble court. In his report the said Engineer has opined that the house in question should be reconstructed at the earliest to save the human life as both walls and roof slabs got sever damages. As such the evidence of the said Engineer is very necessary and essential by way of additional evidence for the just and proper decision of the case.

4. That inadvertently the bills of the building materials purchased by the applicant/plaintiff at the time of the construction of his house in question, were remained to be tendered before the Hon'ble court at the time of evidence of the applicant plaintiff by his counsel. This very material fact came into the notice and knowledge of the applicant/plaintiff as well as his new counsel at the time of preparation of arguments. Moreover, the aforesaid bills were handed over by the applicant plaintiff to his counsel at the time of filing of the suit. The mistake of non-tendering the aforesaid documents at the time of evidence of the applicant/ plaintiff is neither intentional nor wilful, but is bonafide one. As such the said documents are liable to be tendered by the

applicant/ plaintiff in additional evidence, which is also very necessary and essential for the just decision of the present suit.”

7. The argument now being raised by the learned counsel for the plaintiff-petitioner is not the reason stated in the application, rather the application merely states that the plaintiff-petitioner has got his house inspected by an Engineer and wishes to place on record the said report alongwith the photographs. It has further been stated in para 4 that inadvertently the bills of the building material purchased by the plaintiff-petitioner at the time of construction of his house were not tendered and, hence, he be permitted to do so. It is to be seen that the bills were well within the knowledge of the plaintiff-petitioner who chose not to tender them at the relevant time. Further, the report of the Engineer was also to be tendered in the affirmative since the onus to prove that damage had been caused to his house was cast upon the plaintiff-petitioner and, hence, he had to prove the same in the affirmative. Not having led the evidence, the present application for additional evidence to fill up the lacuna in the evidence cannot be permitted.

8. In view of the above, I do not find any merit in the present revision petition. The same being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

9. It is made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

27.11.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO