



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

300

CR-1703-2023**Date of decision : 19.09.2024****Naveen Kumar****..... Petitioner****versus****Kulbhushan Bhardwaj and another****..... Respondents****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Sandeep Kotla, Advocate
for the petitioner.

Mr. Chanderhas Yadav, Advocate
for respondent No.1.

None for respondent No.2.

PANKAJ JAIN, J. (Oral)

1. Present revision petition has been filed impugning order dated 16.01.2023 (Annexure P-3) whereby the application filed by the petitioner under Order XVI Rule 14 CPC was rejected, and order dated 24.01.2023 (Annexure P-5), whereby an application filed by petitioner under Section 151 CPC for additional evidence stands rejected.

2. Petitioner is a defendant facing suit for specific performance. The defence raised by the petitioner is that in fact the agreement to sell is a security document and was never intended for sale of property. On 16.01.2023, Civil Judge (Sr. Divn.) passed the following order:-

“One DW namely, DW1 Naveen Kumar is present and cross- examined. No other DW is present. Adjournment requested. Perusal of the file



shows that the plaintiff has already availed several effective opportunities but failed to conclude his evidence. On the last dates of hearing, it was clarified that, if defendants not concluded their evidence, then opportunity to the same, shall be deemed to be closed. No grounds are made out to adjourn the case further for the same purpose. Hence, **evidence of defendants is hereby closed by Court order.**

Arguments heard on the application under Order XVI Rule 14 of CPC read with Section 151 of CPC, Section 73 and 165 of Indian Evidence Act.

Vide my separate detailed order of even date, application under Order XVI Rule 14 of CPC read with Section 151 of CPC, Section 73 and 165 of Indian Evidence Act, stands dismissed.

Now, the matter stands adjourned to **24.01.2023** for rebuttal evidence, if any and for arguments.”

3. Thereafter, the petitioner filed application under Order XVI Rule 14 CPC read with Section 151 CPC and Sections 73 and 165 of the Indian Evidence Act claiming that the attesting witness to the agreement to sell namely Gobind Ram Saini son of Ganga Ram be summoned as a Court witness. The same was declined vide order dated 16.01.2023 itself. Thereafter an application was moved under Section 151 CPC seeking further opportunity to lead evidence claiming that the defendant-petitioner shall conclude entire evidence if granted two effective opportunities. The said application again stands declined holding that since order dated 16.01.2023 was never challenged, it was no reason to entertain the present application.



4. Petitioner is a defendant in a suit for specific performance. Plaintiff has propounded agreement to sell dated 24.02.2012. One Gobind Ram Saini is the attesting witness to the same. Evidence of the defendant was closed by order on 16.01.2023. On the same day, application filed under Order XVI Rule 14 CPC read with Sections 151 CPC and Sections 73 and 165 of the Evidence Act which was also dismissed. Plaintiff again moved an application under Section 151 CPC for leading additional evidence and sought permission to examine Gobind Ram Saini. The same has been again dismissed vide order dated 24.01.2023. Trite it is that once the evidence of the party has been closed by order, he cannot be permitted to lead the same evidence by way of additional evidence in the absence of challenge to the said order. In the present revision petition, however petitioner has challenged all the three orders. Thus, the main prayer of the petitioner is to examine Gobind Ram Saini, who is the attesting witness to the agreement to sell. From the records, it is evident that the agreement to sell propounded by the plaintiff is stated to have been witnessed by Gobind Ram Saini. Gobind Ram Saini was prayed to be summoned as Court witness. The prayer was declined by the Trial Court. Once the plaintiff himself has propounded a document which has been witnessed by Gobind Ram Saini, this Court does not feel that any prejudice will be caused to the plaintiff. The rules of procedure should not be given precedence to sacrifice the substantial justice. More so, when the examination of witness will definitely aid the adjudication of the matter in hand.

5. Reference can be made to the observation made by Supreme Court in ***Kailash v. Nanhku 2005(4) SCC 480***, wherein it has



been held as under:-

“All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the Statute, the provisions of the CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. The observations made by Krishna Iyer, J. in *Sushil Kumar Sen v. State of Bihar* (1975) 1 SCC 774, are pertinent:-

“The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.

The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act *ex debito justitiae* where the tragic sequel otherwise would be wholly inequitable. Justice is the goal of jurisprudence - processual, as much as substantive.”

In *State of Punjab and another v. Shamlal Murari* (1976) 1 SCC 719, the Court approved in no unmistakable terms the approach of moderating into wholesome directions what is regarded as mandatory



on the principle that

"Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice."

In *Ghanshyam Dass v. Dominion of India* (1984) 3 SCC 46, the Court reiterated the need for interpreting a part of the adjective law dealing with procedure alone in such a manner as to sub-serve and advance the cause of justice rather than to defeat it as all the laws of procedure are based on this principle.

The aforesaid view has further been reiterated by the Apex Court in *Rani Kusum v. Kanchan Devi* 2005 (6) SCC 705."

6. In the considered opinion of this Court, it will be in the interest of justice, that two effective opportunities be granted to the defendant-petitioner to conclude the entire evidence subject to payment of Rs.5,000/- to be paid to the respondent-plaintiff.

7. Disposed off, accordingly.

(PANKAJ JAIN)
JUDGE

19.09.2024
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No