



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-3554 of 2019 (O&M)

Date of Order:13.05.2024

DC Colony Cooperative House Building Society Ltd., Kaithal

.Petitioner

Versus

Hardayal Singh (since deceased) through LRs and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajeev Sharma (Raju), Advocate
Ms. Sony, Advocate,
for the petitioner.

Mr. Rajinder Goel, Advocate
for respondent no.11.

ANIL KSHETARPAL, J

1. This revision petition has been filed by the plaintiff to assail the correctness of the First Appellate Court's order dated 18.04.2019, while dismissing its application for permission to lead additional evidence in the form of two agreements and a passbook issued by the revenue authority.

2. The plaintiff is a Co-operative House Building Society (hereinafter referred to as 'the Society'), which is now managed by the Official Liquidator. The residents claim that there were agreements between the management of the Society and neighbourers providing for a passage. The suit was filed by the Society through Official Liquidator. However, the aforesaid agreements and entry in the passbook issued by the revenue authority was not to the knowledge of the Official Liquidator. Hence, the application was filed for permission to lead additional evidence before the



First Appellate Court and the same has been dismissed on the following grounds:-

- (i) It has been filed at a belated stage;
- (ii) It has been filed to fill in lacuna;
- (iii) The scope of First Appellate Court is limited;
- (iv) The plaintiff failed to prove exercise of due diligence;
- (v) The plaintiff is attempting de-novo trial of the case.

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

4. The First Appellate Court is required to decide the appeal upon re-appreciation of evidence and the law. In fact, it is in the nature of re-hearing of the suit. The scope and responsibility of the First Appellate Court is much larger. Hence, the First Appellate Court is not justified in closing its doors for permission to lead relevant documentary evidence. Here is a case where the suit was filed by the Official Liquidator. He has asserted that he did not have knowledge of the documents. In such circumstances, the view taken by the First Appellate Court is myopic.

5. It has been noticed that the courts are dismissing allegations on the ground that an attempt has been made to fill in lacuna in the evidence. The purpose of filing an application for permission to lead additional evidence is to make good the deficiency in evidence. In other words, it results in filling up the lacuna. Hence, the courts are not required to dismiss the application on this ground. Moreover, the material and the relevant documentary evidence should be permitted in order to effectively dispose of the cases. In these circumstances, the courts are expected to take holistic



view of the matter. Hence, the delay, if any, can be condoned by burdening the party with some cost. However, it should not result in denial of justice.

6. The concept of due diligence is also required to be examined in the context of the case. Here is the case where residents of the Society are claiming passage. In absence of the regular management, the Official Liquidator filed the suit on behalf of the Society. He was not expected to know the entire background. In such circumstances, the court erred in dismissing the application.

7. Keeping in view the aforesaid facts and discussion, the revision petition is allowed. The First Appellate Court is requested to permit the plaintiff to lead additional evidence. If the defendant prays for an opportunity, the Court will grant opportunity to the defendant to lead counter evidence.

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

May 13, 2024
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(ANIL KSHETARPAL)
JUDGE

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