

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-532-CII-2024 in/and
CR-4979-2023 (O&M)
Date of Decision: February 08, 2024

Brijeshwar Swaroop and others
...Petitioners

Versus

Adish Aggarwal and others
...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Raj Kumar Gupta and Mr.Ashish Gupta, Advocates
for the petitioners.

Mr.Rajiv Kataria, Advocate
for respondent No.1.

ARCHANA PURI, J.

At the very outset, it is pertinent to mention that though, CM-532-CII-2024 is listed for hearing today, but however, on request of learned counsel for the parties, the main case i.e. CR-4979-2023, which is fixed for 19.02.2024, is taken up for hearing today itself.

During the course of arguments, learned counsel for respondent No.1 has made a submission that he has no objection, if the revision petition is allowed and the application filed by the petitioners for leading additional evidence is allowed and the documents intended to be taken into evidence are allowed.

Challenge in the present revision petition is to the orders dated 13.03.2023 and 10.07.2023, passed by learned Courts below, whereby, an application filed by the petitioners for placing back the documents was though allowed, but the application for leading additional evidence was dismissed.

As culled out from the paperbook, initially, respondents No.1 and 2 had filed a declaratory suit against the petitioners. There was another suit, filed at the instance of the present petitioners, who were defendants in the declaratory suit, for permanent injunction.

During the pendency of both the said suits, an application for placing back the defendants' documents in the declaratory suit from the another suit file, was filed. It is pertinent to mention that at the stage of leading documentary evidence, at the behest of the petitioners, who were defendants before learned Court below, certain documents were sought to be tendered into evidence, which were stated to be there on the Court file, but not tendered into evidence, as they were not available on the Court file, at that time. The evidence was closed by order. It was only on the subsequent inspection of the files of both the aforesaid cases, that the petitioners-defendants No.1, 4, 5 and 6 came to know about the documents to be appended with the file of the other suit between the parties to the lis. It was, thereupon, the application was filed for placing back defendants' documents. The said application was partly allowed vide order dated 13.03.2023, but however, request for exhibiting the documents in evidence of the defendants was not allowed, considering the same, to have been filed at a belated stage.

CR-4979-2023

It was, thereupon, the application for additional evidence was filed, relating to the same documents, which were placed on the file, while taking them from the file of another suit. This application was dismissed vide order dated 10.07.2023.

Feeling aggrieved, the petitioners have filed the present revision petition.

As already noticed aforesaid, learned counsel for respondent No.1 has made a statement that he has no objection, if the said application is allowed.

In view of the statement so made and also as evident from the paperbook, once the documents, which were placed on the other file, (though, stated to be mistakenly) have been allowed to be placed on this file and more particularly, when they are *per se* admissible documents, they ought to be taken on record. It is, otherwise, also in the interest of justice that parties should be allowed to contest their rival claims on merits and the Courts should not lay emphasis upon the technicalities. There is specific assertion about the petitioners, despite due diligence, not being able to tender these documents, at the appropriate stage as they were not available on the Court file, at the relevant time.

Considering the aforesaid fact situation, without prejudice to the rights of the parties to be adjudicated on merits, the present revision petition is hereby allowed and the impugned orders are set aside. Consequently, the application for leading additional evidence is accepted and the requisite documents, which were ordered to be placed on the Court

file, be tendered into evidence, in due course. The evidentiary value, whereof, shall be considered by the Court, at appropriate stage.

February 08, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No