

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****122****CR-6259-2024 (O&M)****Date of Decision : 25.10.2024**

Manmohan Manocha

....Petitioner

VERSUS

Ravinderpal Singh and Another

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vikrant K. Vij, Advocate for the petitioner.

ALKA SARIN, J. (Oral)

1. Present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 08.10.2024 whereby the application filed by the defendant No.1-petitioner for grant of permission to lead additional evidence has been dismissed.
2. The brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 herein filed a suit on 16.07.2016 for recovery of Rs.9,24,000/- (Rs.6,00,000/- as principal amount and Rs.3,24,000/- as interest thereupon) for the period July 2013 to June 2016. It was the case pleaded in the plaint that the defendant No.1-petitioner herein had obtained an amount of Rs.2,50,000/- from the plaintiff-respondent No.1 on 20.10.2004 to send him to America. However, he failed to send the plaintiff-respondent No.1 to America. Writing dated 16.12.2005 was also relied upon. Written statement was filed by the defendant No.1-petitioner herein in the year 2017 raising various preliminary objections. On merits the averments made in the plaint were totally denied. When the matter was fixed for arguments, an application

was filed by the defendant No.1-petitioner for permission to lead additional evidence wherein it was stated that at the time of leading evidence the documents i.e. attested copy of the insurance policy and the photograph of the shop were not tendered due to inadvertence and oversight. Reply was filed to the said application and vide the impugned order dated 08.10.2024 the same was dismissed. Hence, the present revision petition.

3. Learned counsel for the defendant No.1-petitioner would contend that the said evidence is necessary in order to show that the said shop is not on the first floor and that it is in the basement. Learned counsel for the defendant No.1-petitioner has relied upon judgments of this Court in the cases of **Devinder Singh & Ors. vs. Harbhajan Singh & Ors. [2012(72) RCR (Civil) 322]**; **Sham Lal vs. Raj Kumar [2012(57) RCR (Civil) 210]** and **Narinder Kumar vs. Shri Sat Narayan Mandir through Trust Committee Hindu Panchayati Dharamshala & Anr. [2011(3) RCR (Civil) 87]** to contend that additional evidence can be permitted at the stage of rebuttal evidence and arguments.

4. Heard.

5. In the present case the suit filed is for recovery. The defendant No.1-petitioner herein filed his written statement in the year 2017. Thereafter, both the parties led their evidence. In the application for permission to lead additional evidence it has merely been stated that due to inadvertence certain documents i.e. attested copy of the insurance policy and photographs of the shop could not be tendered. The application is totally bereft of any reasoning as to the relevance of the said documents which are sought to be led as

additional evidence. The argument of learned counsel for the defendant No.1-petitioner that the said documents are necessary to show that the shop is in the basement cannot be accepted inasmuch as if there was a dispute whether the shop was on the first floor or in the basement the said evidence should have been led by the defendant No.1-petitioner at the time of leading his evidence and merely stating that the evidence has been left due to inadvertence and hence the application for additional evidence should be permitted cannot be accepted. The endeavour seems to be only to delay the proceedings as also to fill in any lacuna, which may have occurred in the evidence led by the defendant No.1-petitioner.

6. Hon'ble Supreme Court in case of **K.K. Velusamy vs. N. Palanisamy [2011 (2) RCR (Civil) 875 (SC)]** has held as under :

“ 16. We may add a word of caution. The power under section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure

that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs. If the application is allowed and the evidence is permitted and ultimately the court finds that evidence was not genuine or relevant and did not warrant the reopening of the case recalling the witnesses, it can be made a ground for awarding exemplary costs apart from ordering prosecution if it involves fabrication of evidence. If the party had an opportunity to produce such evidence earlier but did not do so or if the evidence already led is clear and unambiguous, or if it comes to the conclusion that the object of the application is merely to protract the proceedings, the court should reject the application. If the evidence sought to be produced is an electronic record, the court may also listen to the recording before granting or rejecting the application.”

7. Hon’ble Supreme Court in case of **M/s Bagai Construction vs. M/s Gupta Building Material Store [2013(3) RCR (Civil) 304]** has held as under :

“ 11. The perusal of the materials placed by the plaintiff which are intended to be marked as bills have already been mentioned by the plaintiff in its statement of account but the original bills have not been placed on record by the plaintiff till the date of filing of such application. It is further seen that during the entire trial, those documents have remained in exclusive possession of the plaintiff but for the reasons known to it, still the plaintiff has not placed these bills on record. In such circumstance, as rightly observed by the trial Court at this belated stage and that too after the conclusion of the evidence and final arguments and after reserving the matter for pronouncement of judgment, we are of the view that the plaintiff cannot be permitted to file such applications to fill the lacunae in its pleadings and evidence led by him. As rightly observed by the trial Court, there is no acceptable reason or cause which has been shown by the plaintiff as to why these documents were not placed on record by the plaintiff during the entire trial. Unfortunately, the High Court taking note of the words “ at any stage” occurring in Order XVIII Rule 17 casually set aside the order of the trial Court, allowed those applications and permitted the plaintiff to place on record certain bills and also granted permission to recall PW-1 to prove those bills. Though

power under Section 151 can be exercised if ends of justice so warrant and to prevent abuse of process of the court and Court can exercise its discretion to permit reopening of evidence or recalling of witness for further examination/cross-examination after evidence led by the parties, in the light of the information as shown in the order of the trial Court, namely, those documents were very well available throughout the trial, we are of the view that even by exercise of Section 151 of Civil Procedure Code, the plaintiff cannot be permitted.

12. After change of various provisions by way of amendment in the Civil Procedure Code, it is desirable that the recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time. This Court has repeatedly held that courts should constantly endeavour to follow such a time schedule. If the same is not followed, the purpose of amending several provisions in the Code would get defeated. In fact, applications for adjournments, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be considered. We are satisfied that the plaintiff has filed those two applications before the trial Court in order to

overcome the lacunae in the plaint, pleadings and evidence. It is not the case of the plaintiff that it was not given adequate opportunity. In fact, the materials placed show that the plaintiff has filed both the applications after more than sufficient opportunity had been granted to it to prove its case. During the entire trial, those documents have remained in exclusive possession of the plaintiff, still plaintiff has not placed those bills on record. It further shows that final arguments were heard on number of times and judgment was reserved and only thereafter, in order to improve its case, the plaintiff came forward with such an application to avoid the final judgment against it. Such course is not permissible even with the aid of Section 151 Civil Procedure Code.”

8. The judgment relied upon by the defendant No.1-petitioner in case of **Devinder Singh** (*supra*) would not come to the aid of the defendant No.1-petitioner inasmuch as there can be no quarrel with the proportion of law laid down. However, it does not deal with the case where the evidence could not be led due to inadvertence. The judgment relied upon by learned counsel for the petitioner in case of **Sham Lal** (*supra*) is also not a case where the evidence could not be led due to inadvertence/oversight. The third judgment in case of **Narinder Kumar** (*supra*) has also no applicability to the present case as it was laid down in the said judgment that the additional evidence can be led at the stage of arguments. The learned counsel has been unable to point

out a single averment in the application as to the relevancy of the documents.

In the absence of any explanation, the application has rightly been rejected.

9. In view of the above, I do not find any merits in the present revision petition and the same is accordingly dismissed. Pending applications, if any, also stand disposed off.

25.10.2024

jk

(ALKA SARIN)

JUDGE

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