



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CR-236-2025 (O&M)
Date of Decision: 16.01.2025

Dulli Chand (now deceased) through LRs

...Petitioner

V/s

Kamal

...Respondent

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Yash Gupta, Advocate, for the petitioner.

VIKRAM AGGARWAL, J (ORAL)

CM-591-CII-2025

Prayer in this application moved under Rule 3-A(i) of the Chapter 6 Part B Volume V of the High Court Rules and Orders, is for grant of leave to file the present case without number of Roll of Advocate.

Application is allowed as prayed for.

CR-236-2025

1. The present revision petition is directed against the order dated 19.12.2024 (Annexure P-5) passed by the Court of learned Addl. Civil Judge (Sr. Divn.), Ferozepur Jhirka, vide which the application (Annexure P-4) filed by the petitioner-defendant for summoning witnesses has been dismissed.

2. The facts, as emanating from the revision petition, are that a suit for possession by way of specific performance of agreement to sell dated 22.05.2020 was filed by the respondent-plaintiff against the petitioner-defendant. The suit was opposed by way of written statement (Annexure P-2).

Vide order dated 28.11.2024, the schedule of evidence of the defendant was



fixed. An application (Annexure P-4) for summoning three doctors to prove the fact of the petitioner-defendant suffering from brain tumor and having been under treatment in many hospitals and further having lost his eye sight due to the said brain tumor was moved. The said application was, however, dismissed by way of the impugned order leading to the filing of the present revision petition.

3. I have heard learned counsel for the petitioner.

4. Learned counsel submits that despite the fact that the application for summoning three doctors to prove the facts duly pleaded in the written statement was moved well in time, the trial Court erred in rejecting the same and that too by wrongly referring to the contents of the written statement. He submits that while rejecting the application, the learned trial Court also commented upon the merits of the case which could not have been done at the stage of decision of the application.

5. I have considered the submissions made by learned counsel for the petitioner.

6. The written statement filed by the petitioner-defendant is on record as Annexure P-2. Paragraph No.1 on merits reads as under:-

“Para No.1 of the plaint is wrong and denied. It is denied that the defendant had ever agreed to sell in respect of suit land to the plaintiff or that he had executed the alleged agreement in favour of plaintiff. The agreement in question is result of misrepresentation and fraud and the same is wrong, illegal, null, void, nonest, fraudulent, forged, fabricated. It is submitted that at the time alleged execution of agreement to sell, the defendant was not in position as he was suffering from brain tumor since the year 2016 and he was completely confined to bed and he was unable to move, walk and talk. Moreover, at the time of alleged execution of agreement to sell, there was completely lockdown in India due to Covid-19 and there was no possibility to execute the alleged agreement in such conditions.”



7. It is, therefore, clear that it had duly been stated in the written statement that at the time of alleged execution of the agreement to sell, the defendant was unwell and he was suffering from brain tumor since 2016 and was completely confined to bed. The application moved by him sought summoning of three witnesses, who had treated the petitioner-defendant. The details of the medical record were also given in the application. The trial Court, however, observed that when the schedule for defendant's evidence was framed on 28.11.2024, no such witnesses were sought to be summoned and the application was filed on 18.12.2024. The application was, therefore, rejected. Not only this, the trial Court went on to hold that merely because the petitioner-defendant was under treatment for brain tumor, would not prove that he was not capable to execute the agreement to sell dated 22.05.2020. It was held that under the circumstances, it was not justified to summon the doctors.

8. In the considered opinion of this Court, the view taken by the learned trial Court is erroneous and cannot be sustained. The merits of the issue would be decided after the conclusion of the evidence. The petitioner-defendant moved an application for summoning of witnesses at the very initial stage i.e. after few days from the schedule of evidence having been fixed. These days, evidence is recorded by way of video conference and in the considered opinion of this Court, the petitioner-defendant should not be denied a chance to summon and examine the witnesses to prove his case. It has to be borne in mind that important rights of the parties are involved in any *lis*, and, therefore, each party should be granted an adequate opportunity to prove its case.

9. In view of the above, the present revision petition is allowed. The impugned order dated 19.12.2024 (Annexure P-5) passed by the Court of



Addl. Civil Judge (Sr. Divn.), Ferozepur Jhirka, is set aside and the application for summoning of witnesses stands allowed. The trial Court may proceed further from the said stage.

10. Needless to assert that the allowing of this revision petition would not give leverage to the petitioner to delay the proceedings and the trial would be concluded as expeditiously as possible.

Pending application, if any, shall also stand disposed of.

(VIKRAM AGGARWAL)
JUDGE

January 16, 2025

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No