

**(1998) 03 P&H CK 0029**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Revision No. 4284 of 1997

Sukhdev Singh

APPELLANT

Vs

Gurmukh Singh

RESPONDENT

**Date of Decision:** March 19, 1998

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 18 Rule 17A

**Citation:** (1998) 3 CivCC 641 : (1998) 120 PLR 46 : (1998) 2 RCR(Civil) 113

**Hon'ble Judges:** Sat Pal, J

**Bench:** Single Bench

**Advocate:** Gorakh Nath, for the Appellant; Vikas Kumar, for the Respondent

**Final Decision:** Allowed

**Judgement**

@JUDGMENTTAG-ORDER

Sat Pal, J.

This petition has been directed against the order dated 15.9.1997 passed by Additional Civil Judge (SD) Dabwali. By this order the learned Additional Civil Judge has allowed the application filed by the plaintiffs-respondents under Order 18 Rule 17-A CPC for production of additional evidence. Notice of this petition was issued to the respondents.

2. Mr. Gorakh Nath, the learned counsel appearing on behalf of the petitioners has drawn my attention to the order dated 18.12.1996 (copy Annexure P-1) and submits that in terms of the said order, the evidence of the plaintiffs was closed by the learned trial Court. He further submits that the said order dated 18.12.1996 was not challenged by the respondents-plaintiffs and as such the said order has become final. The learned counsel contends that since the learned trial Court has closed the evidence by passing a speaking order which had become final, the application subsequently filed under Order 18 Rule 17-A CPC was not maintainable. In support of his submission the learned counsel has placed reliance on a judgment of this

Court in *Chand Singh v. Narain Singh* 1990 (1) L.J.R. 719.

3. Mr. Vikas Kumar, the learned counsel appearing on behalf of the respondents, however, submits that the documents which are sought to be brought on record by way of additional evidence were available in Pakistan and he got these documents in India on 4.8.1997 through some person who visited Pakistan in July, 1997 and immediately thereafter the application under Order 18 Rule 17-A CPC was filed on 21.8.1997. He submits that since these documents are necessary for the proper adjudication of the case and despite due diligence the respondents-plaintiffs could not bring on record the same earlier, the order passed by the learned trial Court is legal and valid. In support of his submissions, the learned counsel has placed reliance on a judgment of the Supreme Court reported in [Jaipur Development Authority Vs. Smt. Kailashwati Devi](#), and a judgment of this Court in [Jaskaur Singh Vs. Pritam Singh](#).

4. After hearing the learned counsel for the parties and having perused the records, I am of the opinion that the impugned order passed by the learned trial Court is not legally sustainable. In the present case the suit was filed on 7.12.1993 and the evidence of the plaintiffs was closed by a speaking order dated 18.12.1996 passed by the learned trial Court. The said order itself shows that besides various opportunities granted to the respondents-plaintiffs, six last opportunities were granted to the plaintiffs to complete their evidence. Further prior to July, 1997 the petitioners failed to take any step to get the documents in question from Pakistan though the suit was filed in December, 1993. In view of these facts it cannot be said that despite due diligence, the respondent-plaintiffs could not bring on record the documents which they are now seeking to bring on record by way of additional evidence. The judgment of the Supreme Court in *Jaipur Development Authority* (supra) is of no assistance to the respondents as in the present case the respondents did not exercise due diligence to bring on record the document in question. The judgment of this Court in the case of *Jakor Singh* (supra) is of no assistance to the respondents as in that case the evidence was not closed by an order passed by the learned trial Court whereas in the present case, as stated herein above, the evidence of the respondents plaintiffs was closed by an order passed by the learned trial Court. Even otherwise the order dated 18.12.1996 by which the evidence of the respondents-plaintiffs was closed was not challenged by the plaintiff and the said order became final. In view of the law laid down by this Court, in the case of *Chand Singh* (supra). I am of the opinion that the plaintiff-respondents were not entitled to adduce additional evidence after their evidence was closed by an order passed by the learned trial Court.

5. In view of the above discussion the petition is allowed and the impugned order dated 15.9.1997 passed by the learned trial Court is set aside. Consequently, the application filed by the respondents-plaintiffs under Order 18, Rule 17-A stands dismissed. No Cost.