

Vinayak Traders Vs Kapisthal Rice International and Another

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Sept. 15, 2010

Acts Referred: Civil Procedure Code, 1908 (CPC) – Order 13 Rule 1, Order 18 Rule 17A, Order 18 Rule 3, 151 Constitution of India, 1950 – Article 227

Hon'ble Judges: Gurdev Singh, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Gurdev Singh, J.
Heard.

2. This civil revision under Article 227 of the Constitution of India has been preferred by the petitioner-defendant, M/s Vinayak Traders against the

order dated 18.8.2010 passed by Civil Judge (Senior Division) Kaithal, vide which he permitted respondents-plaintiffs, M/s Kapisthal Rice

International and Jagmohan, to examine the expert witness by way of additional evidence.

3. The facts relevant for the present revision are that the plaintiff filed suit for recovery of Rs. 1,84,324/- against the defendant, as balance price of

the goods(rice) sold by them to the defendant, which he used to purchase on credit. The plaintiffs had been maintaining the books of account and

all the transactions between the parties were entered therein. They produced their evidence in the affirmative and thereafter the defendant was

called upon to produce his evidence. After the defendant closed his evidence, the plaintiffs came up with the plea to examine the expert in rebuttal

to prove that the writing dated 21.5.2003 alleged to have been written by the defendant bears his signatures, by getting the same compared with

the admitted writings Ex. D-1 and D-2. That plea of the plaintiffs was allowed by the trial court vide order dated 19.8.2009. The defendant filed a

revision petition against that order which was allowed by this Court vide order dated 6.5.2010. Thereafter, the plaintiffs moved an application u/s

151 CPC with the same prayer on the ground that they wanted to examine that expert witness, Sh. R.V. Vahshisth, by way of additional evidence

which was allowed vide the impugned order.

4. It has been submitted by learned Counsel for the petitioner-defendant that once this Court has disallowed the prayer of the plaintiffs to examine

that expert witness in rebuttal, the same could not have been allowed by the trial court by resorting to Section 151 CPC, as Order 18 Rule 17-A

CPC, which dealt with the production of additional evidence, already stands omitted by way of amendment and that the passing of the impugned

order is direct violation of Order 18 Rule 3 CPC.

5. I do not find any force in the contention of the learned Counsel for the petitioner-defendant. Merely that the plaintiffs have not been allowed to

examine the expert in rebuttal evidence, cannot be made a ground for disallowing them to examine him by way of additional evidence. The fine

distinction is that in case they had been allowed to examine that expert witness in the rebuttal evidence, the defendant would not have any

opportunity to rebut the same. Once that witness will be examined by way of additional evidence, the defendant shall have the right to rebut that

evidence.

6. The writing dated 21.5.2003 was put to the defendant during his cross examination though the same was never pleaded nor was relied upon by

the plaintiff. As per Order 13 Rule 1, the plaintiffs could have put any such document during the cross examination though the same was not relied

upon by them. Once the defendant denied his signatures on that writing, the plaintiffs could examine an expert witness for getting those disputed

signatures compared with his admitted signatures. The rules of procedure are hand maids of justice which are meant to advance the cause of justice

and not to deny the parties a fair trial and decision of merits. The order passed by the trial court does not suffer from any illegality. There is no

ground for interfering with the well reasoned order, while exercising powers under Article 227 of the Constitution of India.

7. The revision petition is dismissed accordingly.