

(2012) 08 P&H CK 0313

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 6139 of 2010

Regd. Proprietorship Firm M/s
Ashoka Trading Company

APPELLANT

Vs

M/s Gopal Rice Mill and Others

RESPONDENT

Date of Decision: Aug. 17, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 18 Rule 17, Order 18 Rule 17A
- Criminal Procedure Code, 1973 (CrPC) - Section 151

Hon'ble Judges: A.N. Jindal, J

Bench: Single Bench

Advocate: R.K. Gupta, for the Appellant; Arihant Jain, for the Respondent

Final Decision: Allowed

Judgement

A.N. Jindal, J

1. This petition has arisen out of the order dated 21.7.2010 passed by the Additional Civil Judge (Senior Division), Safidon, dismissing the application of the plaintiff-petitioner for leading additional evidence by way of production of rokar and nakal bahi for the years 2001-02 and 2002-03, maintained by him as part of three bahi accounts through Ashok Kumar proprietor of the firm by way of additional evidence. The factual background of the case is that the plaintiff had filed a suit for recovery of Rs. 5,26,405/- against the defendants on account of purchase of paddy from the plaintiff firm and non payment of the price thereof. It has been specifically pleaded by the plaintiff- petitioner that he maintains the regular accounts though he had produced the Form-I and the lodger containing the entries, yet, he could not produce the account books i.e. rokar and nakal bahi due to inadvertence, but the same are necessary documents as such he has sought to produce the same by way of additional evidence by examining Ashok Kumar.

2. The defendants contested the application by filing reply and stated that the case is lingering on for the last seven years and the application has been filed just to delay the proceedings.

3. Arguments heard.

4. The present suit for recovery filed by the plaintiff is based on the I-Forms and ledger and the regular books of account which he maintains as alleged by him in para No. 2 of the plaint. The same is reproduced as under :-

2. That the plaintiff firm is carrying the business of Commissioner Agent in Anaj Mandi Safidon and keeps regular account books in regular course of business. The balance is struck daily in cash book etc. The plaintiff firm used to send periodically returns to the various depts. of State/Central Govt. and other depts. etc. as per requirement of law.

5. Though the plaintiff firm could not produce the nakal bahi and rokar which are part of three bahi accounts, yet it proved Form I and the ledger. The nakal bahi and rokar are not the independent documents to prove the entries made with regard to the transactions between the defendant No. 1 and the plaintiff, yet these are the supporting documents in order to lend corroboration. The plaintiff has since submitted that the details of the entries are sent to the different departments, therefore, such old entries i.e. of the year 2001-02 and 2002-03 cannot be concocted in any manner.

6. The scope of additional evidence has been described in case Salem Advocate Bar Association, Tamil Nadu vs. Union of India, 2005 (3) RCR (Civil) 530 wherein it was observed as under :

... it has been clarified that on deletion of Order 18 Rule 17A which provided for leading of additional evidence, the law existing before the introduction of the amendment, i.e. 1st July 2002, would stand restored. The Rule was deleted by Amendment Act of 2002. Even before insertion of Order 18 Rule 17A, the Court had inbuilt power to permit parties to produce evidence not known to them earlier or which could not be produced in spite of due diligence. Order 18 Rule 17A did not create any new right but only clarified the position. Therefore, deletion of Order 18 Rule 17A does not dis-entitle production of evidence at a later stage. On a party satisfying the Court that after exercising of due diligence that evidence was not within his knowledge or could not be produced at the time of party was leading evidence, the Court may permit leading of such evidence at a later stage on such terms as may appear to be just.

7. The provisions relating to the leading of additional evidence were allowed to survived despite the deletion of Order 18 Rule 17A with a view to serve the cause of justice and not thwart it merely on certain grounds that poor illiterate persons, ignorant of intricacies of law may not suffer for certain lacunae which are left

incomplete for want of certain evidence which if they had exercised due diligence would have produced the same. The legislature did not wipe out the scope of additional evidence particularly for the reason that the material evidence may not remain hidden under the carpet on account of ignorance of intricacies of law; the fault of the counsel; bona fide mistake on account of which the same could not be produced or due diligence could not be exercised. However, the legislature left it open to the petitioner to explain as to why such evidence was not led at the earlier stage. Even that was also tried to be plugged while stating that even such evidence can be led on such "terms and conditions". In other words, the material evidence which was essential for the just decision of the case and which enables the court to pronounce the judgment could be allowed even at a belated stage on certain conditions i.e. it could award some costs for delay in producing such evidence and it could check if the same was relevant to solve the lis between the parties and not alien to the issues framed in the case. Such provisions have been incorporated under the law not to thwart justice but to impart cause of justice, provided there was no scope such evidence being concocted, manipulated, forged or fabricated. Such evidence which appears to the court; to put the clock back; highly belated; produced with a motive to frustrate or cause extra ordinary delay in delivery of justice could be discouraged. When the evidence is more or less documentary and of public nature, the same could be allowed on such terms and conditions. The Apex Court while considering the provisions of Order 18 Rule 17A read with Section 151 of the Code, discussed as to under what conditions, the additional evidence could be permitted, observed in case [K.K. Velusamy Vs. N. Palanisamy](#), Recent Apex Judgments (R.A.J.) 83 as under :-

16. We may add a word of caution. The power u/s 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 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.

8. Since the instant suit involving the heavy recovery has been filed by the petitioner himself, therefore, he cannot be said to be interested in delaying the process. It may further be observed that the petitioner from the very beginning mentioned in the plaint that he maintained bahi accounts regularly in the ordinary course of nature, therefore, there was no reason for him to conceal this evidence. The evidence being documentary in nature which is difficult to be concocted or fabricated, cannot be said to be ingenuine or irrelevant to the lis into controversy. The application is for production of the documentary evidence and re-call of the witness could be only to the extent of proving those documents, therefore, the same also cannot and does not amount to filling up the lacunae. This evidence if allowed may assist the court to give authenticity to the other documents already produced by him and it will also not result into protracted trial.

9. As such this court is of the view that it would be expedient in the interest of justice and for enabling the court to pronounce the judgment, the additional evidence may be allowed. Resultantly, this revision petition is accepted, impugned order is set aside and the trial court is directed to allow the additional evidence by proving nakal bahi and rokar through Ashok Kumar PW, who may be recalled and would be examined only to the extent of proving these two documents and not beyond that.