
(2001) 02 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2508 of 1996

Kartar Kaur

APPELLANT

Vs

Atul Kumar and others

RESPONDENT

Date of Decision : 15-02-2001

Acts Referred:

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

Citation : (2001) 02 P&H CK 0009

Hon'ble Judges : Bakhshish Kaur, J

Bench : Single Bench

Advocate : J.S. Toor, for the Appellant;

Judgement

Bakhshish Kaur, J.—This revision petition has been directed against the impugned order dated May 13, 1996 as the Learned Civil Judge (Jr

Division), Ferozepur, had allowed the application under Order 18 Rule 17-A CPC moved by the Plaintiff-Respondents.

2. The Plaintiffs before the trial Court, Respondents herein, had challenged the validity of the order dated February 22, 1991, passed by the

learned Sub Judge Ist Class Zira, vide which the possession of the land in dispute was delivered. The suit was contested by the Defendant. During

the pendency of the suit, the Plaintiffs wanted to produce certified copy of the order dated February 22, 1991, passed by Shri S.M.S. Mahil Sub

Judge, Zira, as at the time of filing the suit they were in possession of the photocopy of the order, as the certified copy of the same was not

available to them, therefore it could not be filed earlier.

3. The application was resisted by the Defendant now Petitioner on the grounds the it is frivolous and not bona fide, as the additional evidence

required to be produced was not only in the knowledge of the Plaintiffs, but it was the basis of the suit and the Plaintiffs did not exercise due diligence to produce the same.

4. It is true that the Plaintiffs have challenged the validity of the order dated February 22, 1991, passed by Shri S.M.S. Mahil, Sub Judge, Zira,

which is certainly the basis of the suit, but I have no hesitation to hold that the original document is beyond the reach of the Respondents. They had

been making efforts to obtain the certified copy of the order but it was not supplied to them. The Copying Agency concerned had also reported

that the file is not traceable. Thus, where the custodian of the judicial record expresses its inability to produce the original record, or to supply the

certified copy of order because the file is not traceable, then responsibility of not exercising due diligence cannot be fastened on the Respondents.

The Trial Court has rightly exercised the discretion by allowing the application under Order 18 Rule 17-A CPC. Procedure is meant for advance

and not for obstructing the cause of justice.

5. Mr. Toor, learned Counsel for the Petitioner argued that once the Plaintiffs made the statement that they closed their evidence, then they cannot

be allowed to lead evidence. To my mind, where a party is unable to get certified copy of the document due to non-availability of the record, then

the statement made by it in closing the evidence would not be a bar in applying for leading additional evidence under Order 18 Rule 17 A CPC.

The technicalities of law and procedure should not stand in the way of a party and the party cannot be made to suffer simply for the reason that

statement has been made closing the evidence and that thereafter the application under Rule 17-A CPC can not be filed.

6. For the aforesaid reasons, I do not find any ground to interfere with the findings recorded by the learned courts below.