

(1998) 02 P&H CK 0135
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2066 of 1997

Sanatan Dharam College for Women

APPELLANT

Vs

Kirpal Singh and Another

RESPONDENT

Date of Decision : 12-02-1998

Acts Referred:

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

Citation : (1998) 118 PLR 806 : (1998) 2 RCR(Civil) 231

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : Arun Palli, for the Appellant; R.C. Dogra and G.S. Gandhi, for the Respondent

Final Decision : Allowed

Judgement

Swatanter Kumar, J.—This revision petition is directed against the order of Civil Judge (Junior Division), Jalandhar dated 24.4.1997, wherein the, learned Court dismissed the application filed by the plaintiff for leading additional evidence. In order to appreciate the controversy it may be necessary to refer to certain basic facts giving rise to the present revision.

2. The petitioner herein had filed a suit for permanent injunction against the respondent No. 1 herein that he be restrained from interfering in the peaceful possession of the plaintiff over the suit property. The plaintiff in the plaint had claimed that it is an educational society for creating and running an institution for the women and Dharam Pal Dada is its Manager, who is duly authorised to institute the suit. The defendant-respondents were contesting the suit on merits as well as had taken up an objection that the plaintiff is not a legal entity and, therefore, cannot file the suit. However, the defendants had admitted in their written statement that there is a college in Jalandhar known as Sanatan Dharam College for women.

3. An issue was framed, "Whether the plaintiff has got no legal entity and the

suit is liable to be dismissed? OPD". The onus to prove this issue was on the defendants. Parties had led their evidence and when the case was fixed for arguments, the present application was filed for leading additional evidence. The additional evidence was restricted to the production of registration certificate issued under the provisions of the co-operative Societies Act to show that the plaintiff was a legal entity and was duly registered. It was further stated in the application that as a result of over-sight on the part of the counsel and the party, the said document could not be produced and proved on record. The learned counsel for the petitioner, in support of his arguments and the fact that the application should have been allowed by the learned trial Court rested upon a judgment of this court in the case of Hari Engineering v. Hari Chand 1992(2) RRR 526.

4. On the other hand, the learned counsel for the respondents has stated that the application was moved at a belated stage and there was no reason for permitting such additional evidence because the plaintiff, if at all, was obliged to lead such evidence at an initial stage. Thus, he prayed that in view of the judgments of this Court in the cases 1980 (2) R.L.R. 206 and 1996 (4) I.C.C. 857, the application has been rightly rejected by the learned trial Court and the order needs to be sustained by this Court.

5. As is clear from the above facts, there is no doubt that there was an obligation upon the petitioner to prove that plaintiff was a legal entity, in its evidence led at the very initial stage. The issue framed by the Court had placed onus upon the defendants, thus, the plaintiff had a right to lead evidence in rebuttal. The negligence on the part of the counsel unless and until is clubbed with lack of bonafides or is intended to abuse the process-of Court should not normally be permitted to adversely affect the interests of the parties concerned. It is a matter of settled principle of law that the genuinity of the document which is sought to be produced at a subsequent stage is one of the features which the Court may have to consider, while permitting or refusing leave to lead additional evidence. The document in question is a certificate of registration. The said document prima-facie cannot be said to be a forged document or a document which could be manipulated, fabricated or produced by a party during the pendency of the suit. Averment to this effect that it was an educational society which was running the Institution had been made at the outset of the proceedings i.e. in the plaint itself. There being a specific pleading and the parties being at issue at that matter and keeping in view the facts and circumstances of this case, where institution is praying for a decree of injunction in regard to interference by the defendants in its affairs, it will be too harsh to shut the doors on the plaintiff to prove his case in this regard. The delay and some negligence on the part of the counsel can be compensated in terms of costs rather than dismissing the present suit on this ground and leaving the parties to have any round of litigation on somewhat similar situations.

6. The procedural law must act as a linch-pin to keep the wheel of expeditious

and effective determination of dispute in its place and moving. The procedural checks must achieve its end object of just fair and expeditious justice to parties without seriously prejudicing the rights of any parties. The provisions of Order 18 Rule 17-A must and necessarily be read with other provisions of the same Order of the Code. In a recent judgment of this Court in the case of Banwari Vs. Nagina, , decided on 6.2.1998, the Court held as under:-

"Primary distinction is between not to able to produce in spite of due diligence and waiver to lead evidence. "Waiver" is an intentional act or an act which can be reasonably construed from the record that the party intentionally failed to lead evidence which it ought to have. There is also no doubt to the fact that Order 18 Rule 2 CPC has to be read in conjunction with the provisions of Order 18 Rule 17-A CPC. The legislative intent behind these two Rules is that the party must lead evidence on all the issues onus of which is on him on the date fixed by the Court. Sub-rule 4 of Rule 2 of Order 18 still gave powers to the Court to permit a party to examine any witness at any stage for the reasons to be recorded in writing. This rule was introduced by amendment to the CPC in the year 1976 as well as Rule 17A was also introduced by the same amendment. These amendments are obviously intended to give wider discretion to the Court for permitting additional evidence at any stage of the suit. Discretion must and has to be exercised on settled principles of law, the basic need being complete and effective-adjudication between the parties in regard to the subject matter of the suit without offending any provision of the Code and causing undue advantages to the applicant over the non-applicant. Earlier to the amendment Rule 17 of Order 18 gave jurisdiction to the Court to recall the witness already examined, but addition to these two provisions by way of amendment can no way be interpreted so as to give no benefit to the applicant if the facts and circumstances of a case and ends of justice so demand."

7. Reference can also be made to the judgment of this Court in the case of Kaura Ram Vs. Gobind Ram and Others, and Weston Electronics Limited v. Chand Radio and Ors. 1988 93 P.L.R. 690.

8. Viewing the present case in the light of above well enunciated principles of law the element of negligence is traceable in the attitude of the plaintiff, but that by itself in every case cannot be considered sufficient to fore-close the request of a party for leading additional evidence. The document of registration is a document which is issued by the concerned authorities after following the procedure prescribed and under the procedures of the relevant Act. Even the supporting evidence for issuance of such a document is always available. To say that such a document can be fabricated is a submission which is more imaginary than realistic. The suit is still pending before the trial Court and the inconvenience faced by the respondents herein resulting from application being filed at a belated stage can certainly be compensated in terms of costs and restricting the opportunities, which may be given to the plaintiff-petitioner in this regard. Negligence and over-sight of the counsel per se may not constitute a sufficient

ground for allowing such an application. This has to be looked into with the other attendant circumstances like stage of the case, nature of the document, reasons stated by the party and fact whether the party has totally failed to act with reasonable due diligence or not. It may be the cumulative effect of all these circumstances which may guide the Court in adjudicating such an application without losing the sight of acceptance, effective, and complete adjudication of the proceedings before the Court.

9. In a recent case the Hon''ble Supreme Court of India in the case of Jaipur Development Authority Vs. Smt. Kailashwati Devi, permitted the party to adduce documentary evidence even at the appellate stage. In that case *ex parte* decree was passed against the defendant in the suit. The appeal was preferred before the High Court and two documents were sought to be filed which were in possession of the defendant relating to possession of the suit property. High Court rejected the said prayer, but the same was allowed by Hon''ble Apex Court.

10. I am unable to see any lack of bonafides on the part of the plaintiff which is an educational institution in filing the present application. The controversy was one which arose from the pleadings of the parties and the respondents in this petition are not being taken by surprise. Keeping in view the nature of the documents and other circumstances seen in the light of the above mentioned well enunciated principles of law, I am of the considered view that the application of the petitioner should have been allowed for leading additional evidence. Consequently, this petition is allowed, the impugned Order dated 24.4.1997 is set aside. The plaintiff petitioner shall be entitled to lead the additional evidence but not more than one opportunity shall be granted to the petitioner-plaintiff for this purpose. The plaintiff shall be obliged to lead such evidence on the date fixed by the trial Court and would not be entitled to any -adjournment on any ground, whatsoever, except for the paucity of time before the trial Court. The petition is allowed subject to payment of costs of Rs.2500/-, costs being conditional. This petition is accordingly disposed of.