

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-32172-2015 (O&M)
Date of decision : 09.10.2015

M/s P.L. Forging Private Ltd. and others

...Petitioners

Versus

M/s Veekay Concast (P) Ltd.

...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Vaibhav Sehgal, Advocate,
for the petitioners.

Mr. Ankit Jindal, Advocate,
for Mr. Suman Jain, Advocate,
for the respondent.

JITENDRA CHAUHAN, J. (Oral)

The petitioner is aggrieved against the order dated 19.08.2015 (Annexure P-2), passed by the learned Additional Sessions Judge, Ludhiana, whereby, the revision petition filed by the petitioner against order dated 23.08.2014 (Annexure P-3), passed by the learned Judicial Magistrate 1st Class, Ludhiana, dismissing the application to allow him to cross examine the witness, has been dismissed as also, order dated 18.03.2014 (Annexure P-4) passed by the learned Judicial Magistrate 1st Class, Ludhiana, whereby, cross examination of the petitioner has been treated as NIL.

The learned counsel for the petitioner submits that though,

four opportunities were granted to the petitioner, however, on two occasions, the complainant did not appear, whereas, on the remaining two dates, the learned counsel representing the petitioner before the trial Court was not available on account of his personal difficulty.

On the other hand, the learned counsel for the respondent states that the petitioner deliberately did not avail the opportunities afforded to him and the explanation offered deserves to be rejected.

Heard.

From the perusal of the zimni orders reflected in para No.4 of the petition, it emerges that on 08.11.2013, CW1 tendered evidence in the form of affidavit and his cross examination was deferred to 02.12.2013. On 02.12.2013 and 21.12.2013, the Presiding Officer was on leave and the matter was adjourned to 13.01.2014. The matter was taken up on 14.01.2014 (13.01.2014 being holiday), on which date, the complainant requested for and adjournment as the witness did not come present. Similarly, on 03.02.2014, CW1 did not come present and the matter was adjourned to 17.02.2014. On 24.02.2014, on the request of the petitioner-accused, the case was adjourned to 24.02.2014, for cross-examination of the complainant. Thereafter, on 24.02.2014, the counsel for the accused was not available. Similarly, on 05.03.2014, the counsel for the accused did not cross-examine CW1 and consequently, his cross-examination was ordered to be treated as NIL.

From the collective reading of the zimni orders, the non-appearance

does not appear to be intentional.

In the instant case, while dismissing the revision petition of the petitioner vide order Annexure P-2, the learned revisional Court has opined that if the order dated 18.03.2014 is not set aside, it will cause great prejudice to the accused. Even the learned trial court in order Annexure P-3 has held that the relief could not be granted as it would amount to recalling of its own order.

The dispute pertains to the recovery of approximately Rs.47.00 lacs. Two opportunities afforded to the petitioner could not be availed for non-availability of the learned counsel. For the failure of the counsel, the petitioner cannot be allowed to suffer. However, the petitioner also had to be vigilant and could have made an alternate arrangement.

In view of the above, the present petition is allowed. The impugned orders Annexures P-2, P-3 and P-4 are hereby set aside. The petitioner shall be afforded reasonable opportunity to cross-examine the witness. However, the same shall be subject to payment of Rs.50,000/- as costs, with the Secretary, District Legal Services Authority.

Disposed of.

09.10.2015
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(JITENDRA CHAUHAN)
JUDGE