

Civil Revision No.3451 of 2013

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In the High Court of Punjab and Haryana at Chandigarh

**Civil Revision No.3451 of 2013(O&M)
Date of Decision:06.09.2016**

Surinder Singh and another

---Petitioners

vs.

M/s Sutran Polymers Private Limited and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Rakesh Chopra, Advocate
for the petitioners

Mr. Vikas Bali, Advocate
for the respondents.

Rekha Mittal, J.

The present petition has been directed against order dated

25.4.2013 (Annexure P-1) passed by the Additional Civil Judge (Senior Division), Khanna whereby application for recalling DW1 for cross examination has been allowed.

Counsel for the petitioners has submitted that the petitioners filed a suit for issuance of direction to the respondents/defendants to deliver the machines, described in head note of the plaint against the agreed value. The petitioners adduced their evidence and thereafter, the case was pending for adducing evidence by the respondents/defendants. Sh. Sunil Bhalla, Director/Managing Director of respondent company tendered into evidence his affidavit by way of examination in chief and another witness Vinod Kumar DW2 also tendered into evidence his affidavit by way of examination in chief and his cross examination was treated as nil vide order dated 21.7.2012. The petitioners challenged order dated 21.7.2012 in Civil Revision No. 5974 of 2012 and the same was allowed vide order dated 8.10.2012 subject to payment of costs of Rs.5000/-. In pursuance of the order passed by this Court, the petitioners cross examined Vinod Kumar DW2 on 13.2.2013. On the same day, counsel for respondents sought to tender Sunil Bhalla DW1 in the witness box for his cross examination but

the request was disallowed by the trial court vide order dated 13.2.2013 (Annexure P-2) and the case was fixed for rebuttal and arguments. Later, the respondents/defendants filed an application for permitting them to tender Sunil Bhalla in the witness box for his cross examination by the petitioners/plaintiffs and the same was allowed vide order impugned. It is argued with vehemence that once the trial court has rejected prayer of the respondent for cross examination of Sunil Bhalla on 13.2.2013 and the order has attained finality, the trial court was not competent to permit recalling of Sunil Bhalla DW1 for his cross examination. In support of his contention, he has referred to the provisions of Section 141 of the Code of Civil Procedure (in short “CPC”) to contend that the principle of res judicata applies to all proceedings in any court of civil jurisdiction.

Counsel for the respondents, on the other hand, has supported the impugned order with the submissions that as counsel for the petitioners was not present before the Court on 21.7.2012, the day cross examination of Vinod Kumar DW2 was treated as nil, counsel for the respondents due to some inadvertent mistake closed their evidence without ensuring that cross examination of Sunil Bhalla DW1 had been conducted. It is further

submitted that the petitioners cannot be allowed to take advantage of their own wrong/lapse for failure to cross examine Sunil Bhalla on the day, he tendered into evidence his affidavit by way of examination in chief.

I have heard counsel for the parties, perused the paper book particularly the various annexures placed on record.

It is an undisputed position of the case that on 21.7.2012, cross examination of Vinod Kumar was treated as nil and the said order was set aside by this Court in Civil Revision No. 5974 of 2012 and thus providing an opportunity to the petitioners to cross examine the said witness subject to payment of costs. There is also no dispute that Sunil Bhalla DW1, Director/Managing Director of the respondent-company appeared in the witness box and tendered into evidence his affidavit by way of examination in chief but his cross examination was not conducted by counsel opposite. Vinod Kumar DW2 was cross examined on 13.2.2013 in pursuance of the direction issued by this Court but request made by counsel for the respondents qua cross examination of Sunil Bhalla DW1 was declined with the following observations:-

“But the perusal of the file shows that cross examination

of DW2 was treated as nil on 21.7.2012 whereupon the plaintiff moved the Hon'ble High Court and then got an opportunity to cross examine DW2. On the said date, neither the defendant offer DW1 Sunil Bhalla for cross examination nor the cross examination was either treated as nil or presence of Sunil Bhalla was marked therefore in such like circumstances the defendant witness being not turning up to mark his presence and evidence having been closed DW1 cannot now offer him for cross examination.”

Later, the present application was filed for recalling Sunil Bhalla for cross examination and the same was allowed after having heard counsel for the parties in the light of facts set up in their pleadings.

This Court in *State of Punjab vs. Ajmer Singh 2009 (2) RCR (Rent) 169* has held that even if an order is passed directing closure of evidence, it can never be said to be irretrievably sealed for all purpose. Instances may arise when the party shows reason for his inability to produce evidence and the Court on a proper consideration of the fact could reopen

the case which is closed. This power to reopen is an inherent power with the court to be exercised under Section 151 CPC. It has further been held that order closing evidence is not a judicial order on merit relating to the case and it is purely a docket order of adjourning a particular case after directing the evidence to be closed. The purpose of trial is to secure the relevant materials for adjudication. There can be no valid adjudication in absence of a fair opportunity to a party. If the party had no valid reason, it had other ways of compensating for the time loss to the opposite party or if the Court's own time has been wasted, it could again direct imposition of costs even to the service institutions attached to the Court.

Indisputably, the order dated 13.2.2013 was not challenged before this court. There can not be dispute that the High court in exercise of its supervisory jurisdiction can examine correctness or/and legality of an order passed by a court subordinate to the High Court. Equally settled is that power of Article 227 can be exercised suo motto or otherwise. In view thereof, I have firstly examined order dated 13.2.2013 itself. In view of the observations made in **Ajmer Singh's case (supra)**, the trial court committed a serious error in rejecting prayer of the respondents to allow Sunil Bhalla's

appearance in the witness box for cross examination. The trial court got entangled in technicality, misdirected itself by overlooking that rules of procedure are meant to be applied for enhancement of justice and not to scuttle it. In this view of the matter, the order dated 13.2.2013 does not stand the test of judicial scrutiny and merits intervention of this Court.

The trial Court refused to allow Sunil Bhalla to tender into the witness box for his cross examination only because evidence has been closed by the defendants. However, good sense prevailed upon the court and it rectified the error committed earlier by passing order dated 13.2.2013. I would hasten to add that had Sunil Bhalla DW1 been cross examined by counsel for the petitioners on the day he tendered into evidence his examination in chief, any such situation would have been easily avoided. Conversely, if Sunil Bhalla is not permitted to appear in the witness box for his cross examination, it would deprive the respondents of a fair opportunity to secure the relevant materials for adjudication on merit. In the given facts and circumstances, I do not find any reason to interfere in the discretion exercised by the trial court in exercise of its inherent jurisdiction.

For the foregoing reasons, the petition fails and is accordingly

dismissed. No order as to costs.

(Rekha Mittal)
Judge

6.9.2016
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No