

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

**CR No.4511 of 2016O&M)
Decided on. 17.11.2016.**

Sumer Singh Saini

.....Petitioner

Versus

Hindustan Machines and Tools Ltd. And others

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.M.K.Dogra, Advocate
for the petitioner.

DARSHAN SINGH, J. (Oral)

CM No. 18496-CII of 2016

This application has been filed for placing on record the certified copies of all the interim orders passed by the learned trial Court.

Heard.

In view of the reasons mentioned in the application, the application stands allowed and the certified copies of all the interim orders passed by the learned trial Court are taken on record subject to just objections of the opposite party.

CR No. 4511 of 2016(O&M)

The present revision petition has been preferred against the order dated 27.05.2016, passed by the learned Additional Civil Judge (Sr. Division), Kalka, whereby the application moved by the petitioner-

plaintiff for permitting him to summon the record mentioned in Annexure A-VII and A-VIII, K.P.Mishra and to tender his affidavit along with documents in his evidence, has been dismissed.

2. Learned counsel for the petitioner contended that the application moved by the petitioner on 18.01.2016 was declined by the learned trial Court to summon the remaining record mentioned in Annexure A-VII and A-VIII. But, on the same day, the learned trial Court allowed the application moved by the petitioner to supply him the copy of the record produced by respondent no.1. The said copies were supplied to the petitioner on 28.01.2016 and thereafter, the case was fixed for his evidence on 29.01.2016 by granting the last opportunity. Plaintiff has also placed on file his affidavit, but the same could not be tendered in evidence as the record mentioned in Annexure A-VII and A-VIII was to be tendered in his examination in chief. The record was voluminous and sufficient time was required to scrutinize the same. The learned trial Court has wrongly closed the evidence of the petitioner-plaintiff on 29.01.2016. Learned counsel for the petitioner contended that the petitioner is an old man. He is fighting the suit for grant of his service benefits. If, he is not allowed to produce the record mentioned above and to tender his affidavit in evidence, he will suffer irreparable loss and will not be able to prove his case.

3. He further contended that at least one opportunity may be granted to the petitioner in the interest of justice so that he may adduce his evidence to prove the pleas raised by him in the suit. He should not be deprived of the fair opportunity to lead the evidence. Thus, he contended that the impugned order vide which his application to allow

him to lead the evidence has been dismissed by the learned trial Court, is illegal.

4. I have duly considered the aforesaid contentions.

5. This case has chequered history. The copy of the interim orders brought on record reflects the conduct of the petitioner. The petitioner has filed the suit for mandamus directing the respondents to promote him as Supervisor WS-I/PS-II with all back benefits of seniority and increments. He also claimed the arrears of salary along with interest. He has sought the decree for declaration that the order dated 08.07.2003 passed by the respondents is illegal and is liable to be set aside, whereby the particular period in his service tenure was declared as 'no work no pay'.

6. It is pertinent to mention that initially the suit filed by the petitioner was dismissed under Order 17 Rule 3 of the Code of Civil Procedure, 1908 (for short CPC) vide judgment and decree dated 25.07.2014. The petitioner preferred the appeal against the said judgment and decree. The learned First Appellate Court accepted the appeal. The judgment and decree dated 25.07.2014 passed by the learned trial Court was set aside. The case was remanded to the learned trial Court with a direction to summon the witnesses of the petitioner mentioned in the application dated 17.02.2014 by giving not more than three opportunities of the reasonable time. Thereafter, the learned trial Court again started with the trial of the suit. After that numerous opportunities were granted by the learned trial Court to the petitioner-plaintiff to produce the evidence.

7. The copies of the interim orders brought on record passed

by the learned trial Court shows the adamant conduct of the petitioner. On 20.01.2015, he was very much present in the Court, but sought the adjournment on the plea that he wants to engage a new counsel, so the case was adjourned to 20.02.2015 for his evidence and his witnesses were ordered to be summoned. He was also given the opportunity for the service of his witnesses by taking *dasti* summons. On 20.02.2015, he again sought an adjournment to engage a new counsel and moved the application for adjournment, so the case was adjourned to 05.03.2015 for the evidence of the plaintiff. The learned trial Court directed the petitioner to positively engage his counsel, so that he may lead his evidence on that date. On 05.03.2015, Sh. Kapil Sharma, Advocate filed Vakalatnama on behalf of the plaintiff and on that date six witnesses were present. But, due to want of record they could not be examined and case was adjourned to 26.03.2015. On that date, one witness was examined and other summoned witnesses were not present. On 03.04.2015, two witnesses were present and examined, the case was again adjourned to 17.04.2015 for evidence of the plaintiff and opportunity was given to the plaintiff for service of his witnesses *dasti*. On 17.04.2015, one witness was present, but he has not brought the record, so the case was again adjourned to 01.05.2015. On 01.05.2015, Raman Kaushal, Joint General Manager (Purchase) HMT has appeared and made the statement that the attendance register for the relevant period has already been destroyed. The case was again adjourned to 08.05.2015 for plaintiff's evidence. On that date, one witness was present and produced the xerox copy of the record. The case was again adjourned to 21.05.2015 for evidence of the plaintiff and the learned

trial Court has given the warning that the petitioner should conclude the evidence on that date as the case was more than ten years old.

8. On 21.05.2015, two witnesses were present. They have also brought the summoned record, but as they have simply produced the record, so they were not examined and case was again adjourned to 29.05.2015 for evidence of the plaintiff. On 29.05.2015, one witness Naresh Sharma has come present, but plaintiff did not examine him as the record brought by him was already placed on record in the evidence of the plaintiff. The case was again adjourned to 03.07.2015 for remaining evidence of the plaintiff. On 03.07.2015, two witnesses namely Dharamveer Singh, AGM and Rajiv Chadha, AGM were present. One Rajinder Singh Sethi has also appeared on behalf of Sh. K.P.Misra, but he was not having any authority letter. On that date, the plaintiff was also directed to make his own statement on the next date of hearing as he was not examined. On 17.07.2015, Rajinder Singh Sethi has appeared on behalf of K.P.Misra along with an authority letter issued in his favour, but counsel for the petitioner had raised an objection for examination of Rajinder Singh Sethi. The said objection was over ruled by the learned trial Court. Dharamveer Singh AGM, HMT Ltd. was also present along with whole summoned record. But, the counsel for the petitioner-plaintiff refused to examine the witnesses on the plea that plaintiff Sumer Singh was not present on that date and he made the statement that he will not examine PW-Dharamveer Singh in the absence of his client. So, the witnesses were discharged and case was adjourned to 30.07.2015.

9. On 30.07.2015, Dharamveer Singh AGM again appeared

along with entire record. Plaintiff-Sumer Singh appeared in the Court and stated that his counsel will appear at 2.00 p.m and he will inspect the record only after the appearance of his counsel. At 2.00.p.m Sh. Kapil Sharma, Advocate learned counsel for the plaintiff appeared. Plaintiff and his counsel inspected the record for more than two hours. But, they did not examine the witnesses. PW-Dharamveer Singh AGM has come present along with record for the second time, but the plaintiff did not examine him. He even himself did not appear in the witness box despite availing numerous opportunities. However, in the interest of justice, the learned trial Court again granted one more opportunity to the plaintiff to conclude his evidence. PW-Dharamveer Singh was bound to attend the Court on that date along with the whole record. On 14.08.2015, PW-Dharamveer Singh again appeared along with the record. Plaintiff perused the record. He produced his affidavit in his testimony, but cross-examination could not be recorded as the Court time was over. The learned trial Court has categorically mentioned in the order dated 14.08.2015 that whole time has been taken by learned counsel for the plaintiff and plaintiff himself while perusing the record produced by Dharamveer Singh. He had appeared on three occasions before the Court. The plaintiff again sought adjournment to peruse the record. The learned trial Court again adjourn the case to 28.07.2015 and last opportunity was granted.

10. On 28.07.2015, PW-Dharamveer Singh again appeared along with record. The said record was inspected by plaintiff-Sumer Singh. But, even on that date the plaintiff did not inspect the record completely and sought adjournment. So, the case was again adjourned

to 04.09.2015. On 04.09.2015, Dharamveer Singh was again present along with the record, but the plaintiff-Sumer Singh made the statement that the whole record has not been produced. He also moved an application to summon Sh.K.P.Misra, Executive Director of HMT as a witness. The said application was allowed. K.P.Misra was ordered to be summoned along with record and case was adjourned to 18.09.2015. On 18.09.2015, one R.S.Sethi, Junior Personal Officer HMT, Pinjore was present and he made a statement that the record sought to be summoned by plaintiff from K.P.Misra has already been tendered by him before the learned trial Court on 17.07.2015. On that date, he had appeared under the authority letter of K.P.Misra. On that date, plaintiff did not examine any witness, rather he moved another application to summon the further record. The said application was also allowed and the plaintiff was permitted to summon Dharamvier Singh AGM, accounts along with the record.

11. Dharamvir Singh AGM again came present in the Court on 09.10.2015 along with the record, but on that date his counsel did not appear and on the request made by the plaintiff, the case was adjourned to 23.10.2015. On 23.10.2015, Dharamvir Singh AGM was again present along with the record, but again counsel for the petitioner stated that the record was incomplete. The case was again adjourned to 20.11.2015 for plaintiff's evidence. On 20.11.2015, though plaintiff was present in the Court, but he did not make the statement and sought adjournment. He also moved certain applications. The case was adjourned to 27.11.2015, however for some dates the case was remained pending for arguments on four applications moved by the

petitioner. The said applications were decided by the learned trial Court vide order dated 18.01.2016 and the learned trial Court finally granted final opportunity to the plaintiff to conclude his evidence and the case was listed for 29.01.2016. The order dated 29.01.2016 passed by the learned trial Court shows that the plaintiff was supplied all the copies of all the documents required by him. The plaintiff had availed 18 opportunities. On that date, the plaintiff appeared in the Court at 12.45 p.m. and stated that his counsel will appear in the Court only in the post lunch session. The learned trial Court recorded the statement of the petitioner to this effect, but he refused to sign the statement on the pretext that his counsel was not present. Even, in the post lunch session, counsel for the petitioner-plaintiff did not appear and he appeared at 3.00 p.m. and made the statement that he is not able to lead any evidence in the suit. On that date he sought another adjournment. The plaintiff-petitioner even failed to make his own statement despite availing 19 opportunities. So, in those circumstances, the evidence of the plaintiff was closed by the learned trial Court.

12. The aforesaid sequence of events shows that numerous opportunities were availed by the petitioner. Even, the dismissal of the suit under Order 17 Rule 3 CPC had no desired effect to put the petitioner-plaintiff to his guards. He even did not care for the order passed by the Appellate Court to produce the evidence by availing three opportunities. The copy of the interim orders brought on record rather shows the adamancy on the part of the plaintiff. He even himself did not stepped into the witness box though he had attended the Court on various dates, which indicates that the petitioner-plaintiff did not

produce the evidence intentionally and deliberately with a view to prolong the case. The Hon'ble Supreme Court in case **M/s Shiv Cotex Vs. Trigun Auto Plast P. Ltd. And others 2011(4) R.C.R (Civil) 807** has laid down as under:-

“16. No litigant has a right to abuse the procedure provided in the CPC. Adjournments have grown like cancer corroding the entire body of justice delivery system. It is true that cap on adjournments to a party during the hearing of the suit provided in proviso to Order XVII Rule 1 CPC is not mandatory and in a suitable case, on justifiable cause, the court may grant more than three adjournments to a party for its evidence but ordinarily the cap provided in the proviso to Order XVII Rule 1 CPC should be maintained. When we say 'justifiable cause' what we mean to say is, a cause which is not only 'sufficient cause' as contemplated in sub-rule (1) of Order XVII CPC but a cause which makes the request for adjournment by a party during the hearing of the suit beyond three adjournments unavoidable and sort of a compelling necessity like sudden illness of the litigant or the witness or the lawyer; death in the family of any one of them; natural calamity like floods, earthquake, etc. in the area where any of these persons reside; an accident involving the litigant or the witness or the lawyer on way to the court and such like cause. The list is only illustrative and not exhaustive. However, the absence of the lawyer or his non-availability because of professional work in other court or elsewhere or on the ground of strike call or the change of a lawyer or the continuous illness of the lawyer (the party whom he represents must then make alternative arrangement well in advance) or similar grounds will not justify more than three adjournments to a party during the hearing of the suit. The past conduct of a party in the conduct of the proceedings is an important circumstance which the courts must keep in view whenever a request for adjournment is made. A party to the suit is not at liberty to proceed with the trial at its leisure and pleasure and has no right to determine when the evidence would be let in by it or the matter should be heard. The parties to a suit - whether plaintiff or defendant - must cooperate with the court in ensuring the effective work on the date of hearing for which the matter has been fixed. If they don't, they do so at their own peril. Insofar as present case is concerned, if the stakes were high, the plaintiff ought to have been more serious and vigilant in prosecuting

the suit and producing its evidence. If despite three opportunities, no evidence was let in by the plaintiff, in our view, it deserved no sympathy in second appeal in exercise of power under Section 100 CPC. We find no justification at all for the High Court in upsetting the concurrent judgment of the courts below. The High Court was clearly in error in giving the plaintiff an opportunity to produce evidence when no justification for that course existed.”

In the above authoritative pronouncement, the Hon'ble Apex Court has categorically laid down that the cap of adjournments to a party during the hearing of the suit provided in proviso to Order 17 Rule 1 CPC should be ordinarily maintained, though the Court may grant more than 3 opportunities to a party for its evidence on justifiable cause. The Hon'ble Apex Court has further held that the past conduct of a party in the conduct of the proceedings is an important circumstance which the Courts must keep in view whenever a request for adjournment is made and a party is not at liberty to proceed with the trial at its leisure and pleasure and has no right to determine when the evidence would be let in by it or the matter should be heard. But, in the instant case the conduct of the petitioner-plaintiff was adamant. He even himself did not stepped into the witness box though he remained present on various dates and always found fault with the record brought by the witnesses. He had been moving various applications just to prolong the case. He had availed 19 opportunities to lead the evidence including various last opportunities. Even, then the petitioner did not take the warning of the Court seriously and tried to proceed with the trial at his leisure and pleasure, though he had no right to dictate the terms to the learned trial Court. Thus, the learned trial Court had no other alternative but to close the evidence of the petitioner.

Consequently, the impugned order dated 27.05.2016 does not suffer

from any legal infirmity requiring any interference by this Court.

13. Keeping in view of my aforesaid discussion, the present revision petition is devoid of merits and keeping in view the conduct of the petitioner-plaintiff, the present revision petition is hereby dismissed with Rs. 10,000/- as costs. The petitioner will deposit the costs with the District Legal Service Authority, Panchkula.

A copy of this order be sent to the Secretary, District Legal Service Authority, Panchkula.

November 17, 2016

S.khan

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No