

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

CR No.5699 of 2016(O&M)

Date of decision:2.9.2016

M/s Icomm Tele Ltd.

....Petitioner

VERSUS

M/s Mars Builders and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sumit Jain, Advocate for the petitioner.

REKHA MITTAL, J. (Oral)

The present petition has been directed against order dated 25.07.2016 passed by the Additional Civil Judge (Senior Division) Malout whereby cross examination of Raghbir Moudgil (PW-1) has been treated as Nil.

Counsel for the petitioner has submitted that Narender Singh, a representative of the petitioner, was present in person and made a request for adjournment to cross examine Raghbir Moudgil (PW-1) but the Court below has wrongly recorded 'Given opportunity Nil'. It is further submitted that in the zimini order recorded on 25.07.2016 regarding presence, it is recorded 'Sh. Narinder Singh, Advocate Counsel for defendant No.1'. It is vehemently argued that the petitioner has never engaged Sh. Narinder Singh, Advocate and in the circumstances, treating cross examination as Nil is the result of some confusion and mis-impression.

Another submission made by counsel is that a serious prejudice is likely to be caused to the petitioner in case the only witness

examined by respondent/plaintiff is not allowed to be cross-examined. In addition, it is argued that the petitioner never had the intention to delay the proceedings as written statement was filed on the very next date of appearance of the petitioner before the trial Court.

I have heard counsel for the petitioner, perused the paper-book particularly the evidence of Raghbir Moudgil (PW-1) recorded on 25.07.2016.

Raghbir Moudgil (PW-1) was recalled for cross examination and was actually cross-examined by Sh. S.C. Goklani, Advocate, counsel for other defendants. Presence of 'defendant No.1 in person' is recorded and cross examination was taken as Nil after giving opportunity. Counsel for the petitioner has not disputed that on 25.07.2016 Sh. Narinder Singh, authorized signatory through whom the company has been sued was present in person before the trial Court. The mere fact that in the order dated 25.07.2016, against name of Sh. Narinder Singh, it has been mentioned as 'Advocate Counsel for' is not sufficient to accept the contention that either the Court had any confusion or confusion has led to treating the cross examination of Raghbir Moudgil as Nil on behalf of petitioner/defendant No.1.

As the petitioner has raised a factual controversy with regard to Sh. Narinder Singh having made a request for adjournment, the petitioner may file an appropriate application before the Court below seeking recall of the order dated 25.07.2016. An application filed by the petitioner, in this regard, shall be disposed of by the trial Court, in accordance with law.

For the foregoing reasons, the petition stands disposed of in the aforesaid terms.

SEPTEMBER 2, 2016

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned

:

yes/no

Whether reportable

:

yes/no