

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

-.-

Civil Revision No. 6585 of 2016

Date of decision: 30.09.2016

State Bank of Patiala

..... Petitioner

Versus

M/s Subhash Light House and another

.....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Sandeep Singh Jattan, Advocate
for the petitioner

-.-

Rekha Mittal, J. (Oral)

The present petition has been directed against orders dated 31.08.2015 (Annexure P2) whereby evidence of the petitioner has been closed by order and dated 26.05.2016 (Annexure P4), dismissing the application under Section 151 of the Code of Civil Procedure (in short, 'CPC').

Counsel for the petitioner has submitted that the petitioner-State Bank of Patiala (in short, 'the Bank') has filed a suit for recovery of Rs.78,152.00 along with future interest against the respondents/defendants. One of the witnesses namely Raj Kiran Thaper tendered into evidence her affidavit by way of examination-in-chief on 23.04.2015 and her cross examination was deferred for 19.05.2015. The said witness was partly cross examined on 19.05.2015 and the case was adjourned to 29.07.2015 for remaining cross examination. It is further argued that on 29.07.2015, the witness could not come present as she is suffering from Cancer. It is

vehemently argued that had the witness been cross examined by counsel opposite on two days when she was present before the Court, her testimony would have been read into evidence for deciding the case on merits. It is further submitted that in case the petitioner is not permitted to get completed cross examination of Raj Kiran Thaper, it may cause serious prejudice to the Bank for adjudication of its claim, involving public money, on its merits. It is prayed that the Bank may be allowed one effective opportunity in order to ensure presence of Raj Kiran Thaper for her further cross examination and also examination of one more witness namely Gurpreet Kaur, Branch Manager of the Bank.

I have heard counsel for the petitioner and perused the paper book particularly the orders impugned.

So far as contention of the petitioner that Raj Kiran Thaper was present before the trial Court on two occasions i.e. 23.04.2015 and 19.05.2015 for cross examination, the same is clearly borne out from order dated 26.05.2016. Counsel for the petitioner has informed that no other witness has been examined by the Bank except Raj Kiran Thaper. In the given circumstances, if cross examination of said witness is not completed, her testimony may not be read in evidence and the case would be a case of no evidence on behalf of the Bank seeking recovery from the defaulter loanee. Taking into consideration that a litigant must get fair opportunity to adduce relevant evidence, subservient to substantial justice, the petitioner is provided with one opportunity to get concluded cross examination of Raj Kiran Thaper and to examine another witness namely Gurpreet Kaur on the date already fixed i.e. 01.10.2016 subject to deposit of Rs.10,000.00 with the Legal Services Authority, Ambala. Failure of the petitioner to ensure

presence of Raj Kiran Thaper and Gurpreet Kaur on 01.10.2016 would entail dismissal of the present petition but still the petitioner shall be liable to deposit Rs.10,000.00.

Before parting with the order, it is clarified that the petition has been disposed of without notice to the respondents in order to avoid inconvenience and incurring expenditure by them. However, if the respondents have any grievance to express, they shall be at liberty to file an appropriate application before this Court.

Copy of this order be given *dasti* on payment of usual charges.

(Rekha Mittal)
Judge

30.09.2016
mohan bimbira

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