

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

C.R. No.7180 of 2016

Date of Decision.25.10.2016

Spectrum Life Medical Devices (P) Limited

.....Petitioner

Vs

Dayanand Medical College & Hospital and another

.....Respondents

Present: Mr. Aayush Gupta, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The petitioner-plaintiff is aggrieved of the impugned order whereby the application (Annexure P-4) dated 15.02.2016 for issuance of directions to the witness DW2 to bring on record certain documents, has been dismissed.

Mr. Aayush Gupta, learned counsel appearing for the petitioner submits that suit for recovery of ₹15,30,000/- containing the element of interest @10% has been filed against the respondent for not making the payments in respect of the medical products having been supplied. The stand of the defendant in the written statement was that the person, who had allegedly placed the order was in the service but thereafter, he had resigned. In this aspect of the matter, the record aforementioned was sought to fortify the averments of the plaintiff.

I have heard learned counsel for the petitioner, appraised the paper book and of the view that there was no need of moving application (Annexure P-4) as the Court could have drawn the adverse inference in case the defendant had not been able to discharge the onus/averments in the

written statement.

The application was not maintainable, much less, wholly misconceived. The onus in suit keeps shifting but in order to prove the case of recovery, the onus lies upon the petitioner-plaintiff to discharge the same as per the averments in the plaint, equally so it applies to the defendant.

In view of the aforementioned observations, Mr. Aayush Gupta, learned counsel appearing for the petitioner submits that he may be allowed to withdraw the application provided the order passed thereon may not come in the way while disposing of the suit on merits. I am of the view that the request of Mr. Aayush Gupta is reasonable and justified. There was no need of moving application (Annexure P-4). The same is ordered to be dismissed as withdrawn and the order passed thereon shall not come in the way and the consequential effect would be seen at an appropriate stage.

The revision petition is disposed of with the above observations.

(AMIT RAWAL)
JUDGE

October 25, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No