

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

CR No.7366 of 2016(O&M)

Date of decision:4.11.2016

Mohan Singh

....Petitioner

VERSUS

International Customer Related Management Services Pvt. Ltd.

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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

REKHA MITTAL, J. (Oral)

The present petition directs challenge against orders dated 24.05.2016 (Annexure P-2) and dated 15.09.2016 (Annexure P-5) whereby evidence of the petitioner/defendant was closed by order and application filed for recalling the order dated 24.05.2016 has been dismissed respectively.

Counsel for the petitioner has submitted that the petitioner tendered into evidence his affidavit by way of examination in chief on 06.02.2016 but his cross examination was deferred. He was again present in the Court on 11.05.2016 but again his cross examination was not conducted and the case was adjourned to 24.05.2016. The petitioner came to the Court but as some talk regarding compromise transpired between the parties, the petitioner mistook under a bona fide impression that the case has been adjourned for his evidence but on records evidence of the petitioner was closed by order. It is further submitted that in case the petitioner is not permitted to tender himself in the witness box for his cross

examination, it would be of serious consequence as statement of the petitioner would not be read into evidence and there would be no rebuttal to evidence adduced by the respondent/plaintiff in a suit for specific performance of contract dated 13.02.2007 for sale of land measuring 8 kanals 12.77 marlas, detailed in head-note of the plaint. It is prayed that the petitioner may be provided with one effective opportunity to tender himself in the witness box for his cross examination, may be subject to terms and conditions, if any, ascertained by this Court.

I have heard counsel for the petitioner, perused the paper-book and the various annexures.

The petitioner has already tendered into evidence his examination in chief by way of an affidavit on 06.02.2016 and his cross examination was deferred to 11.04.2016. He was again present in the Court on 11.05.2016 but his cross examination was not conducted. Reply to the application filed by the petitioner for recalling the order dated 24.05.2016 would evident that the petitioner was present in the Court premises even on 24.05.2016 and the factum of the parties having initiated talk for compromise is also borne out from para 2 of the reply filed by the respondent (Annexure P-4).

As per settled position in law, the parties must get fair opportunity to prove their respective claims unless the Court records a finding that absence from the proceedings was mala fide or with an ulterior motive to serve. Equally settled is that the rules of procedure are hand-maid of administration of justice and are required to be applied to enhance the cause of justice. In the given facts and circumstances, it would be fair if the petitioner is allowed one effective opportunity to tender himself in the

witness box for his cross examination, the only witness to be examined by the petitioner.

For the foregoing reasons, the petition is allowed. The petitioner is provided with one opportunity to tender himself in the witness box on the next date fixed in the proceedings subject to deposit of Rs.10,000/- with the Legal Services Authority at Kharar. Failure of the petitioner to ensure his presence before the Court on the date fixed for his further cross examination or deposit of cost would entail dismissal of the petition.

Before parting with this order, it is clarified that the petition has been disposed of without notice to the respondent in order to save it from unnecessary expense and inconvenience. However, the respondent would be at liberty to file an appropriate application in case it has any grievance to express.

NOVEMBER 4, 2016

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no