

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

C.R. No.2077 of 2017

Date of Decision: 22.03.2017

M/s Balaji Generator Centre Private LimitedPetitioner

Versus

M/s Blue Prime Aluminium Limited and othersRespondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Kunal Dawar, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 22.02.2017 (Annexure P-1) passed by Civil Judge (Junior Division), Faridabad, whereby, the evidence of the petitioner/plaintiff has been closed at the stage of cross examination of plaintiff witnesses.

Briefly, the facts of the case are that the petitioner-plaintiff filed a suit for recovery. After notice in the suit, the written statement was filed by defendants and issues were framed on 12.01.2016. Thereafter, plaintiff-petitioner was to examine three plaintiff witnesses, namely, Surinder Kapoor- Director of the Company, Rajesh-Accountant of the Company and Mohit Kochar-Authorized Representative. They tendered their affidavits as PW1 to PW3 on 24.08.2016 and the case was adjourned to 16.09.2016. Thereafter, it was adjourned to various dates i.e 13.10.2016, 10.11.2016, 08.12.2016, 16.01.2017, 02.02.2017 and 22.02.2017.

Thereafter, they could not be cross-examined. Ultimately, the evidence of the petitioner was closed vide impugned order dated 22.02.2017 on the ground that the plaintiff was not willing to pursue his case and he wanted to linger upon the same. Proxy counsel appeared and requested for date on the ground that the arguing counsel was ill. By mentioning that the ailment of the counsel is not a ground to adjourn the case, the request was declined and the evidence of the plaintiff was closed by order of the Court.

Said order dated 22.02.2017 passed by Civil Judge (Junior Division), Faridabad has been challenged by way of filing the present petition by raising various grounds.

Learned counsel for the petitioner submits that only the cross-examination of plaintiff witnesses remains and in case, their cross examination is not completed, it would seriously prejudice the case of the petitioner. There was no delay on the part of the petitioner. Learned counsel also submits that the trial Court should have granted one last opportunity to the petitioner before passing the impugned order and only one effective opportunity is required for cross-examination of prosecution witnesses.

Heard the arguments of learned counsel for the petitioner and have also perused the impugned order as well as other documents on the file.

Facts relating to filing of suit; filing of written statement and passing of impugned order of closing of evidence are not disputed. It is also not disputed that three witnesses have already been examined and only the cross-examination of said witnesses remains to be done. The impugned order has been passed in spite of request made by proxy counsel as the arguing counsel was not well but his request was declined.

A perusal of *zimni* orders shows that three plaintiff witnesses were examined on 24.08.2016 and thereafter on 16.01.2017, one witness was present but the date was sought by counsel for the defendants and it was adjourned on 02.02.2017. Again on 02.02.2017, the case was adjourned to 22.02.2017. On 22.02.2017, the plaintiff witnesses were present in the Court but the counsel for the plaintiff was not present as he was not feeling well and had to go back from the Court. The application was also moved by another counsel for seeking adjournment on this ground but still his evidence was closed as request of proxy counsel was declined. Nowhere, it is mentioned in the *zimni* order that even the last opportunity was granted. Only the cross-examination of plaintiff witnesses remains and in case, the same is not done, it would cause prejudice to the case of the petitioner.

Under such circumstances, the trial Court is under an implied obligation to balance the equities between the parties to a suit to achieve the ends of justice, which is the basic paramount object of the Code. The equities demand that power under the provisions of the Code or the inherent powers should be exercised by the Court to correct imbalances or inequities resulting from unnecessary adjournments, between the parties. No doubt, due to fault of one party, the inconvenience is caused or harassment is there to the party opposite. Inherent powers cannot be used as an instrument to intrude the powers of the Court in regard to a procedure or a remedy, if specifically provided in other provisions of the Code. To do justice is the primary duty of the Court as the duty is imposed upon the Court to keep balance between two parties by considering the ends of justice and to curtail the unnecessary time taken by one party. The intention of the Court is to conclude the evidence of the parties without unreasonably compromising

the expeditious disposal of the suit. The Court is not only to keep balance between the parties but while exercising discretion, the reasonable method is to be adopted. The order closing the evidence of a party has far reaching consequences.

No doubt, in the present case, sufficient opportunities were granted but because of not having been present of all witnesses, they could not be cross examined but while doing justice, sometimes technicalities are to be ignored but without causing injury to the other party. By considering the larger interest of justice, the reasonable opportunity is required to be granted to the party to conclude his evidence by granting last opportunity or by compensating the party opposite with cost.

Without issuing notice to the other party and by considering the facts and circumstances of the case and on perusal of *zimni* orders, the present petition is allowed and the impugned order dated 22.02.2017 passed by learned Civil Judge (Junior Division), Faridabad is set aside subject to imposition of cost of ₹ 10,000/- upon the petitioner to be deposited with the trial Court. The trial Court is directed to grant one effective opportunity to the petitioner for cross-examination of plaintiff witnesses. In case, the petitioner fails to do the needful, he will not be entitled for another opportunity.

(DAYA CHAUDHARY)
JUDGE

22.03.2017
gurpreet

Whether speaking/reasoned

Yes

Whether Reportable

Yes