

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R. No. 3897 of 2017

Date of Decision : 30.11.2017

JAGMOHAN

.... Petitioner

Versus

JAGDISH PARSAD

.... Respondent

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Gursimran Singh Madaan, Advocate for the petitioner.
Mr. Ajay Jain, Advocate for the respondent.

B.S.WALIA, JUDGE (ORAL)

1. Challenge in the revision petition is to order dated 29.08.2016 (Annexure P-3) whereby the plaintiff-petitioners evidence was ordered to be closed by the learned Civil Judge (Senior Division), Ludhiana except for his cross-examination on the next date as also to order dated 09.05.2017 (Annexure P-6) whereby the application for recall of order dated 29.08.2016 was dismissed by the learned Civil Judge (Senior Division), Ludhiana.
2. Learned counsel for the plaintiff-petitioner contended that vide order Annexure P-3 dated 29.08.2016 evidence of the plaintiff-petitioner was closed except for his cross-examination on the ground that already four opportunities had been availed but the plaintiff-petitioner had failed to conclude his entire evidence and only PW Jagmohan Singh had appeared for the purpose of filing the affidavit.
3. Learned counsel for the defendant-respondent has vehemently argued that the facts as projected by learned counsel for the plaintiff-petitioner did not depict the correct picture. Leaned counsel contended that a perusal of

order Annexure P-6 dated 09.05.2017 revealed that the learned Civil Judge dismissed the application for recall of order dated 29.08.2016, inter alia on the ground that the application for recall was filed after a lapse of approximately seven months from the date of passing of order dated 29.08.2016 closing the evidence of the plaintiff-petitioner, therefore the same was highly belated besides the order closing the evidence of the plaintiff-petitioner had not been challenged by way of revision and in the circumstances recalling the order would amount to circumventing the order of closing of evidence by the order of Court.

4. Learned counsel for defendant-respondent further contended that allowing application for recall of order closing evidence of the plaintiff-petitioner would tantamount to allowing the plaintiff-petitioner to fill in the lacuna, particularly in view of the fact that pursuant to the order of closure of evidence of plaintiff-petitioner, defendant witness had tendered his affidavit by way of examination in chief on 06.02.2017 and was partly cross-examined on 20.02.2017 and it was only thereafter on 30.03.2017 that application for recall of order dated 29.08.2016 closing the evidence of the plaintiff-petitioner was filed.

5. Learned counsel contended that the stand of the plaintiff-petitioner seeking recall of order closing his evidence on the ground that he wanted to produce certain documents was also of no avail in view of the fact that the documents sought to be produced by the plaintiff-petitioner were already in his knowledge and possession as on the date of the passing of the impugned order.

6. Learned counsel for the defendant-respondent also referred to the decision of this Court in *Smt. Daljit Kaur Vs. Amarjit Kaur and Another*,

2015 (1) ICC 596 to contend that where evidence has been closed by order of the Court, and the same was not challenged by way of a revision petition, then the aggrieved party could not produce evidence by way of additional evidence as the same would tantamount to circumventing the order of closure of evidence.

7. Learned counsel further contended that the plea of the plaintiff-petitioner that his counsel had not conducted the case properly, therefore, application had been moved for recall of order after engaging a new counsel, also had no legs to stand, in view of the fact that the entire exercise was done only after defence had been disclosed and defendant witness had been partly examined on 20.02.2017.

8. Learned counsel for the defendant-respondent further contended that merely alleging that former counsel had not conducted the case properly, therefore plaintiff-petitioner had changed the counsel, was also of no avail in the absence of any action shown to have been taken by the plaintiff-petitioner against the former counsel.

9. Learned counsel contended that in the circumstances, it was apparent that the order passed by the learned Civil Judge (Senior Division) Ludhiana dated 29.08.2016 (Annexure P-3) closing the evidence of the plaintiff-petitioner except for his cross-examination as also dismissing the application for recall of order dated 29.08.2016 were in accordance with law, therefore, immune from challenge.

10. I have considered the submissions made by the counsel for the parties and am of the view that in view of the position as noted above no case is made out warranting interference with the well reasoned order passed by the learned trial Court. Admittedly the evidence of the plaintiff-petitioner was

closed vide order dated 29.08.2016 except for his cross-examination on the next date. No action was taken by the plaintiff-petitioner to challenge the aforesaid order by way of a revision petition or by seeking recall of the order immediately on the passing of the same. In the circumstances, the defendant witness tendered his affidavit by way of examination in chief on 06.02.2017 and was partly cross-examined on 20.02.2017.

11. At this stage, it needs noticing that although allegations have been leveled by the plaintiff-petitioner that counsel conducting the case on behalf of the plaintiff-petitioner was not appearing in the case, yet copy of cross-examination of defendant witness on 20.02.2017 produced by learned counsel for the defendant-respondent reveals that it was the former counsel who had cross-examined the defendant witness on 20.02.2017.

12. In the aforementioned circumstances, moving an application on 30.03.2017 seeking recall of order dated 29.08.2016 was highly belated besides reflects an attempt to fill up lacuna noticed by the plaintiff-petitioner after cross-examining the defendant-witness on 20.02.2017. Some credence could have been given to the allegations of the plaintiff-petitioner that case had not been conducted properly by the former counsel, therefore, he had engaged another counsel and thereafter filed an application for recall of order dated 29.08.2016 in case some action had been taken against the counsel alleged to have not conducted the case properly on extraneous consideration.

13. Despite query, learned counsel for the plaintiff-petitioner has not pointed out any action having been taken against the counsel in question.

14. In the circumstances, no case, whatsoever is made out warranting interference with order Annexure P-3 dated 29.08.2016 or for that matter

order Annexure P-6 dated 09.05.2017.

15. Resultantly finding no merit in the revision petition, the same is dismissed.

November 30, 2017

gyanchand

(B.S.WALIA)

JUDGE

1.

Whether speaking/reasoned:

Yes/No
2.

Whether reportable:

Yes/No