

In the High Court of Punjab and Haryana at Chandigarh

C.R.No. 5652 of 2012

Date of Decision: 24.8.2017

Rajinder Kumar

---Petitioner

versus

Dalip Kumar

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. I.S.Brar, Advocate
for the petitioner
Mr. Arihant Jain, Advocate,
for the respondent

Rekha Mittal, J.

The present petition directs challenge against order dated 17.5.2012 (Annexure P-1) passed by the Civil Judge (Junior Division), Faridkot whereby application filed by the respondent-plaintiff for recalling order dated 14.3.2012 vide which the petitioner/defendant was allowed to summon the witnesses was partly allowed.

Counsel for the petitioner would urge that the respondent/plaintiff has filed a suit for recovery of Rs. 2,95,000/- on the basis of a pronote and receipt dated 20.12.2004. In the written statement filed by the petitioner, he has challenged his liability to pay any money with the plea that the pronote and receipt are forged documents prepared in connivance with witnesses, relatives of the respondent-plaintiff. It is further submitted that while adducing evidence, the petitioner filed application dated 13.3.2012 for permitting the petitioner to deposit process fee and diet money of witnesses and the same was allowed by the Court on 14.3.2012 and summons of the witnesses mentioned in the application were issued by

the Court. It is further submitted that the summoned witnesses appeared before the court but the respondent-plaintiff filed the instant application for recalling order dated 14.3.2012 and the application filed by the respondent was partly allowed. It is argued with vehemence that once the court has passed an order summoning the witnesses, the court was not competent to recall its own order.

Counsel for the respondent/plaintiff, on the contrary, has supported the impugned order with the submission that in the application for summoning the witnesses, there is no reference as to how examination of the witnesses sought to be summoned through process of the Court is relevant for adjudication of the matter in controversy. It is further argued that the application for summoning the witnesses was allowed by the court in routine without giving any hearing to the parties or application of mind. It is further submitted that the petitioner, in reply to the application filed by the respondent/plaintiff for recalling the order, failed to say a word as to how examination of the witnesses in regard whereof order dated 14.3.2012 has been recalled is relevant much less necessary for just decision of the case. The last submission made by counsel is that no litigant can be allowed to summon irrelevant witnesses at the cost of wastage of resources, time and energy of all stake holders and for that matter of the court when the courts otherwise are burdened with heavy pendency of cases.

I have heard counsel for the parties, perused the paper book particularly the order dated 14.3.2012 whereby the petitioner was permitted to deposit an amount of Rs. 1650/- as diet money for summoning as many as six witnesses.

Perusal of the reply to the application filed by the respondent

for recalling order dated 14.3.2012 would make it evident that the petitioner has altogether failed to explain as to how summoning and examination of the witnesses of whose examination has been disallowed by the court was relevant in the given facts and circumstances of the case. Counsel for the petitioner has failed to advance any meaningful arguments as to how the witnesses whose examination has been rejected by the trial court is material for the purpose of adjudication of the matter in controversy.

So far as plea of the petitioner that the court was not competent to recall the order, order dated 14.3.2012 cannot be said to a judicial order passed by the Court after examining relevance of the witnesses for the purpose of lis pending before the Court. As a matter of fact, this application was allowed by the Court even without looking into the controversy involved in the suit. When the issue with regard to relevance and irrelevance was raised by the other side, the Court has examined the said aspect on the basis of respective pleadings of the parties as well as their stand in the application and reply. In view of the discussion made hereinbefore, as the remaining witnesses were not found to be relevant for the purpose of present case, no error much less illegality can be noticed in the impugned order.

For the foregoing reasons, petition fails and is accordingly dismissed. However, nothing stated hereinbefore shall be construed as an expression of opinion on merits of the case.

(Rekha Mittal)
Judge

24.8.2017

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No