

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

CR No. 8474 of 2017
Date of Decision: 20.12.2017

M/s The Panipat Woolen and General Mills Company Limited

.....Petitioner

v.

Vipan Bhatla and another

.....Respondents

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

Present:- Mr. Harkesh Manuja, Advocate, for the petitioner.
Mr. Pardeep Kumar, Advocate, for respondent No. 1
Mr. Deepak Manchanda, Advocate, for respondent No. 2

B.S. WALIA, J. (Oral)

1. Challenge in this revision petition is to order dated 24-07-2017 (Annexure P7) on the ground that the learned trial Court has erroneously dismissed the suit for want of evidence, whereas, the evidence was available on record but the learned trial Court has contrary to the record held that there was no evidence on record.

2. Learned counsel for the petitioner contended that the plaintiff had been examined in affirmative on 19.1.2015 though his cross examination was deferred, initially on request of defendant's counsel and subsequently, on request of the plaintiff-petitioner. Besides, even PW-2-Inder Singh, Naib Tehsildar (retired) was examined as well as cross-examined, therefore, the learned trial Court was under a duty to deal with the evidence on record and decide the case in accordance with law instead of dismissing the same for want of evidence.

3. Learned counsel for plaintiff-petitioner relied upon Order 17 Rule 2 and Rule 3 CPC. The same are reproduced hereunder :-

XVII - 2. Procedure if parties fail to appear on day fixed –

Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit.

[Explanation]- Where the evidence or a substantial portion of the evidence of any party has already been recorded and such party fails to appear on any day to which the hearing of the suit is adjourned, the Court may, in its discretion, proceed with the case as if such party were present.

XVII – 3. Court may proceed notwithstanding either party

fails to produce evidence etc. - Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, Court may, notwithstanding such default, -

(a) if the parties are present, proceed to decide the suit forthwith, or

(b) if the parties are, or any of them is, absent, proceed under rule 2.”

4. Learned counsel contended that a perusal of Order 17 Rule 2 CPC revealed that where on a date to which the hearing of the suit is adjourned, the parties or anyone of them failed to appear, the Court may deal with the suit in the manner contemplated in respect thereto under Order IX or where

the evidence or a substantial part of evidence of any party has already been recorded and such party fails to appear on the date to which the hearing of the suit is adjourned, the Court may, in its discretion proceed with the case as if such party were present, whereas a perusal of Order 17 Rule 3 CPC reveals that where a party to a suit, to whom time has been granted, fails to produce evidence or to cause the attendance of its witnesses, the Court may notwithstanding such default proceed to dispose of the suit in one of the modes directed in Order 17 Rule 3 (a) or (b).

5. Learned counsel for plaintiff-petitioner contended that in the light of Order 3 Rule 1 CPC, in the absence of any direction, the presence of parties contemplated in Order 17 Rule 3 (a), where evidence has already been led, is to be construed as including presence through counsel and in the circumstances, the learned trial Court was required to decide the suit on the basis of evidence on record.

6. Learned counsel for respondent No. 1 has not been able to controvert the fact that evidence of the plaintiff was recorded though his cross examination was not conducted and further PW2 Inder Singh, Naib Tehsildar was examined besides cross examined.

7. Learned counsel for the petitioner contended that since evidence on behalf of the plaintiff-petitioner had already been recorded then even if it was to be assumed that the plaintiff was not present on the date of passing of the impugned order, the Court in exercise of its discretion in terms of the explanation to Order 17 Rule 2 of CPC was required to proceed in the matter as if the plaintiff was not present and to decide the suit accordingly. Learned counsel for the respondent, on the other hand, reiterated the reasoning given

in the order and contended that the suit had been rightly dismissed for want of evidence.

8. Admittedly the suit was dismissed under Order 17 Rule 3 CPC by the learned Civil Judge (Junior Division), Panipat, vide order dated 24.07.2017 by observing that despite availing number of opportunities, the plaintiff had not been able to produce any witness, therefore, it was apparent that the plaintiff did not wish to produce any evidence.

9. It has not been disputed by the learned counsel appearing on behalf of the respondent that not only had the plaintiff been examined but even PW-2 Inder Singh, Naib Tehsildar (Retd.) had also been examined as well as cross-examined and that the cross-examination of the plaintiff was deferred initially on the request of the defendant's counsel and subsequently on the request of the plaintiff. Besides, even PW-2 i.e. Inder Singh, Naib Tehsildar (Retd.) had been examined and cross-examined. Order 17 Rule 3 deals with a situation, where a party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed and in such a situation, notwithstanding such default, the court may, if the parties are present, proceed to decide the suit forthwith or if the parties are or any of them is absent proceed further under Order 17 Rule 2.

10. Learned counsel for the petitioner contended that the impugned order was passed on the erroneous assumption that no evidence had been produced, whereas, admitted position was otherwise. In the circumstances, dismissing the suit for want of evidence under Order 17 Rule 3 of CPC was

legally unsustainable. Admittedly, evidence had been recorded on behalf of the plaintiff. Accordingly, the impugned order was not justified.

11. In view of the position noted above, impugned order dated 24.7.2017, dismissing the suit under Order 17 Rule 3 CPC for want of evidence is set aside. Learned trial Court is directed to proceed in accordance with law and decide the suit as expeditiously as possible.

(B.S. WALIA)
JUDGE

20.12.2017
amit

1. Whether Speaking/Reasoned : Yes/No
2. Whether Reportable : Yes/No