

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

**CRM No.M-42265 of 2014 (O&M)
Date of Decision:- March 21, 2017**

M/s Prime Industries Limited

...Petitioner

VERSUS

Sanjeev Khanna

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Namit Gautam, Advocate
for the petitioner.

Mr.Gurcharan Dass, Advocate
for the respondent.

INDERJIT SINGH, J.

The petitioner has filed this petition under Section 482 Cr.P.C. against respondent Sanjeev Khanna for quashing of order dated 07.10.2014 passed by learned Judicial Magistrate Ist Class, Ludhiana, vide which the application under Section 311 Cr.P.C. filed by the petitioner for examining the Managing Director of complainant-company was dismissed in complaint No.61 dated 29.05.2012 titled as 'M/s Prime Industries Limited vs. Mr.Sanjeev Khanna'.

Notice of motion was issued. Learned counsel for respondent appeared and contested the petition.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that during the pendency of the complaint filed by M/s Prime Industries Limited, an application was filed

under Section 311 Cr.P.C. for examining the Managing Director of the

complainant-company. As per the complainant's case, accused approached the complainant for a loan of ₹38.75 lakhs and for repayment of said loan, he issued cheque bearing No.588176 dated 31.10.2011 for ₹37 lakhs. During cross-examination of CW-1, the accused refuted the allegation of the complainant and has reported that the loan was only a transfer entry in the associated company and now there is no liability to pay on the part of the accused. It is stated in the application that said loan agreement and loan documents could not be produced by the complainant due to inadvertence, although the loan documents were mentioned by the complainant witness in the evidence. It is further stated that for proper and just decision of the case, the complainant wishes to examine the Managing Director of the complainant-company namely Sh.R.K.Singhania and wishes to prove on record agreement and papers regarding the loan took the accused from Master Trust Ltd. and loan documents regarding the loan taken by the accused from the complainant-company.

Learned JMIC, Ludhiana, vide impugned order dated 07.10.2014 dismissed the application by holding that if this additional evidence is allowed, it will amount to filling up of lacuna and it is also stated that CW-1 has full knowledge regarding this loan transaction but he failed to give full answer to the question and the complainant has also full knowledge regarding the loan transaction etc.

From the record, I find that notice of motion was issued by this Court only qua proving of documents Annexure P-2 (colly) pages 57 to 63. The perusal of the record shows that documents which the complainant wants to prove are necessary for the just decision of the case. The

documents and these documents are material documents and essential and necessary to determine the dispute between the parties. Even if it is taken that these documents which were in the knowledge of the complainant, have not been proved at the time of leading the evidence, this evidence cannot be declined on the ground of filling up of lacuna.

Learned counsel for the respondent argued that these documents have been forged. At this stage, this Court cannot give any finding whether the documents are forged or not. The appreciation of the evidence and what value is to be attached to that evidence, is to be seen at the time of final decision of the case by the trial Court.

The additional evidence can be produced at any stage of the case. The Court is only to see whether the additional evidence which the either party wants to produce, is necessary for the just decision of the case and to do substantial justice between the parties. The evidence which the complainant wants to produce is necessary for the just decision of the case.

In view of the above discussion, I find that the impugned order dated 07.10.2014 is not as per law and the same is set aside. The application filed by the petitioner-complainant to lead additional evidence is allowed qua proving of documents Annexure P-2 (Colly) pages 57 to 63.

Therefore, finding merit in the present petition, the same is allowed accordingly. Consequently, all the misc. applications, pending if any, stand disposed of.

March 21, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No