

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.322 of 2018
Date of Decision.18.01.2018

Suresh KumarPetitioner

Vs

Rampat SharmaRespondent

2. C.R. No.323 of 2018

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Vs

Rampat SharmaRespondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. J.P. Sharma, Advocate
for the petitioner.

-:-

AMIT RAWAL J.(ORAL)

The petitioner-defendant assailed the impugned orders passed on the even date i.e. 11.01.2018 of the Court below whereby the application for recalling of the plaintiff's evidence has been dismissed and the evidence of the petitioner-defendant was closed.

Mr. Sharma, learned counsel appearing on behalf of the petitioner submits that the suits for recovery of amount of Rs.4 lacs and odd amount and Rs.3 lacs and odd amount were decreed vide ex parte judgment and decree dated 21.04.2012, which were set aside vide order dated 01.04.2017 on the application moved by the petitioner-defendant.

He further submitted that the application for recalling of the plaintiff's witness, Lal Chand was moved on the premise that during the cross-examination of aforementioned witness, material questions remained

from asking. On the same date, the trial Court had closed the evidence of the petitioner-defendant. He seeks one more opportunity to lead evidence to support the averments made in the written statement.

I have heard learned counsel for the petitioner, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Sharma *vis-a-vis* the order dated 11.01.2018 whereby the application for recalling of the plaintiff's witness has been dismissed. No explanation or reasoning has come forth in the application enabling the Court to exercise the discretion vested in it for re-examination. Mere asking of certain questions, in my view, would tantamount to filling up lacunas which practice cannot be permitted. Resultantly, the order under challenge declining the application for recalling the plaintiff's evidence is upheld.

As regards the other argument, I am of the view that one effective opportunity is required to be granted to the petitioner-defendant, though the conduct of the petitioner-defendant, as noticed above, was careless and insouciant in creating all possible impediment *vis-à-vis* appearing in the first instance to contest the suit and obtain an *ex parte* judgment and decree. In the second round of litigation, the aforesaid decree was set aside causing all possible delays and had not been diligent in examining witnesses. However, in order to advance justice and prevent miscarriage of justice, I deem it appropriate to grant one effective opportunity to the petitioner-defendant to conclude the evidence.

Keeping in view the aforementioned, the order under challenge closing the evidence of the defendant is set aside and the petitioner-defendant is granted one more effective opportunity to lead evidence subject to payment of costs of ₹50,000/- in each case which shall be condition

precedent. If the costs is not paid as directed, the order passed already by the court below shall stand restored.

The revision petitions are allowed to the above extent only dispensing with notice to the respondent in order to save time of the Court and defray the expenses of litigation of respondents.

(AMIT RAWAL)
JUDGE

January 18, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No