

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

CR No. 6185 of 2018
Date of Decision: 14.09.2018

K.J. Bhuta

.....Petitioner

Versus

Varpar International Pvt. Ltd. and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Ms. Amrita Nagpal, Advocate
for the petitioner.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 04.07.2018, passed by the Additional Civil Judge (Senior Division), Mohali (for short, the Trial Court), through which the petitioner's defence was closed by order. Also under challenge is the order dated 06.09.2018 passed by the Trial Court denying permission to the petitioner to cross-examine a Handwriting Expert for the reason that through the aforesaid order, its defence had already been closed.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that respondent No.1 filed a suit seeking therein permanent injunction to restrain respondent Nos.2 to 4 from issuing purchase/supply order to the petitioner, who was defendant No.4 in the suit. A declaration was also sought to declare the bid made by the petitioner as illegal and for accepting respondent No.1's bid being the lowest. Mandatory injunction for a direction to respondent Nos.3 and 4 to issue purchase order to respondent No.1 for supply and installation of

laboratory furniture & equipments was also prayed for.

After respondent No.1/plaintiff had led its entire evidence, petitioner/defendant No.4 was granted four opportunities in which the petitioner could not lead its entire evidence leading to the passing of the order dated 04.07.2018 through which except cross-examination of DW1, it was not permitted to lead any further evidence. Thereafter, the petitioner filed an application seeking to lead evidence through a Handwriting Expert, which was declined by the Trial Court through its order dated 06.09.2018, primarily on the ground that the petitioner's evidence had already been closed, which order had not been challenged by him. In these circumstances, the present petition has been filed to challenge therein the aforesaid orders dated 04.07.2018 and 06.09.2018 passed by the Trial Court.

Learned counsel for the petitioner submits that Shri Sharad Aggarwal, Advocate who had been appearing on behalf of the petitioner before the Trial Court, was appointed as Assistant Advocate General, Haryana and therefore, after his appointment the petitioner could not lead its evidence. Learned counsel for the petitioner contends that the presence of Shri Sharad Aggarwal, Advocate has wrongly been recorded in the order dated 04.07.2018 as on that day he never appeared before the Court as on 30.06.2018 he had joined as Assistant Advocate General, Haryana. It is further submitted that the petitioner be granted only one effective opportunity to lead its entire evidence, subject to reasonable costs to be assessed by this Court.

Without commenting on the issue whether the presence of Shri Sharad Aggarwal, Advocate has wrongly been recorded by the Trial Court the fact regarding his appointment and joining as Assistant Advocate

General, Haryana on 30.06.2018 is acknowledged. In view of the afore fact and in line with the principles of natural justice as also not to preclude the petitioner from leading its entire defence before the Trial Court, subject to payment of ₹15,000/- as costs to be paid by the petitioner to respondent No.1, after setting aside the impugned order dated 04.07.2018, one effective opportunity is granted to the petitioner to lead its entire evidence.

Since, through the impugned order dated 06.09.2018, the petitioner's application qua leading expert evidence was rejected only on the ground that through order dated 04.07.2018 its defence had been struck off and that order has now been set aside, it will be open to the petitioner to file a fresh application seeking to lead expert evidence, which application shall be considered and decided by the Trial Court in accordance with law. The decision on the petitioner's application for leading of expert evidence would be taken prior to the grant of one effective opportunity given to the petitioner in the earlier part of the present order.

The present petition is allowed in the above terms.

If the respondents are aggrieved by passing of this order, they are at liberty to approach this Court by filing of an appropriate application.

(DEEPAK SIBAL)
JUDGE

14.09.2018
sandeep

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No