

In the High Court of Punjab and Haryana at Chandigarh

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Civil Revision No.6683 of 2015

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Date of decision:21.5.2018

National Insurance Company Limited

.....Petitioner

v.

M/s Vatika Spinning Mills Ltd.

.....Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. D.P. Gupta, Advocate for the petitioner.

Mr. R.D. Bawa, Advocate for the respondent.

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Inderjit Singh, J.

This civil revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 8.9.2015 (Annexure-P.6) passed by the learned Additional Civil Judge (Senior Division), Chandigarh, allowing the application of respondent for recalling of the witnesses for cross-examination.

Notice of motion was issued in this case.

Mr. R.D. Bawa, learned Advocate has put in appearance on behalf of the respondent and contested this civil revision petition.

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

From the record, I find that M/s Vatika Spinning Mills Limited-

plaintiff filed suit against National Insurance Company Limited for recovery of ₹1,40,82,900/- on account of principal amount and interest @ 12% per annum w.e.f. 17.5.1999 on account of damages/compensation alongwith the pendente lite and future interest and for the costs.

During the pendency of the proceedings in suit, an application was filed by the plaintiff for recalling of witnesses PW-3 Ashok Goyal, PW-9, PW-10, PW-1 and PW-12 for cross-examination. It has been stated in the application that the cross-examination of these witnesses was deferred but due to the fact that counsel for the plaintiff had stopped appearing and practicing, on the next date fixed for cross-examination, without examining these witnesses the evidence was closed. It has been contended that one opportunity should be given to the defendant to cross-examine these witnesses.

On the other hand, learned counsel for the defendant has vehemently opposed the application contending that the defendant has concluded evidence considering the consequences of closure of evidence of plaintiff without cross-examination of these witnesses. He contended that in order to escape the liability, burden is being shifted to the counsel, who was then representing the plaintiff.

The learned Additional Civil Judge (Senior Division), Chandigarh, vide order 8.9.2015 accepted this application subject to payment of costs of ₹25,000/- and the plaintiff was directed to produce the witnesses at his own responsibility for cross-examination on the next date and no further date for the purpose would be given. It has been observed that the defendant shall have opportunity to examine any other witness if the

defendant considers necessary to examine in the light of further cross-examination of these witnesses by the defendant.

I have perused the order dated 8.9.2015 and find that no illegality has been committed by the learned Additional Civil Judge (Senior Division), Chandigarh, while passing the impugned order. As argued these five PWs, have been produced by the plaintiff in the Court, but their cross-examination or further cross-examination was deferred and inadvertently the plaintiff closed the evidence. Then the defendant produced evidence and later on the plaintiff came to know that these PWs have not been cross-examined. If this application is not allowed, the plaintiff will suffer irreparable loss. The statements of these PWs would not be read in evidence. No prejudice is going to be caused if this application is allowed as the defendant will have the opportunity to cross-examine these witnesses and further as per the impugned order the defendant was also given opportunity to examine any other witness in view of the cross-examination of these witnesses. Further more, for the negligence of the plaintiff that he closed the evidence without looking into that some of the witnesses are yet to be cross-examined, the lower Court has already allowed this application subject to payment of costs of ₹25,000/-.

It is settled law that the rights of the parties should be determined on merit, substantially and finally as far as possible and the Court should not go into the technicalities of law.

Keeping in view the facts and circumstances of the present case and in the interest of justice, I find that the cross-examination of these PWs has been rightly allowed by the lower Court and the impugned order is

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correct as per law. No ground is made out to interfere in the impugned order.

Finding no merit in the present civil revision petition, the same is dismissed. However, it is made clear that the plaintiff will produce all the PWs only on the date fixed by the lower Court and for this purpose only one opportunity will be given to the plaintiff to produce the witnesses.

May 21, 2018.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No