

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

CR No.6372 of 2018
Date of decision : 01.10.2018

Sukhjinder Singh

...Petitioner

Versus

UCO Bank and others

....Respondent.

CORAM: HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present:- Ms. Gursharan K. Mann, Advocate
for the petitioner.

Harinder Singh Sidhu, J.

This revision petition has been filed by Sukhjinder Singh-defendant No.3 impugning the order dated 29.08.2018 (Annexure P-3) passed by learned Civil Judge, (Junior Division), Pathankot whereby his evidence has been closed by order.

Respondent No.1 filed a suit for recovery of Rs. 7,34,268/- against respondents No.2 and 3 (defendants No.1 and 2). The petitioner was impleaded as defendant No.3. Respondents No.2 and 3 were proceeded against ex-parte. It is only the petitioner, who is contesting the suit.

On 05.07.2018, the petitioner was present and tendered his affidavit in examination-in-chief. His cross-examination was deferred on the request of counsel for the respondent No.1 and the case was adjourned to 12.07.2018. On 12.07.2018, the learned Judge happened to be on leave and the case was adjourned to 13.07.2018. On that date, an application on behalf of the petitioner was moved for his exemption and the case was adjourned to 25.07.2018. On 25.07.2018, the petitioner was not present and the case was adjourned to 13.08.2018. On 13.08.2018, the petitioner was present,

however he was not crossed-examined as counsel for the respondent No.1/plaintiff was not present and the case was adjourned to 29.08.2018.

Orders dated 13.08.2018 and 29.08.2018 are reproduced as under:

“Defendant No.1 and 2 proceeded against exparte.

DW-1 Sukhjinder Singh is present but not examined as the Ld. Counsel for the plaintiff has gone outside for urgent work. Now to come up on 29.08.2018 for cross-examination of Sukhjinder Singh and for remaining defendant evidence at own responsibility.

Karan Aggarwal
Civil Judge (Junior Division)
Pathankot

Date of order:- 13.08.2018
Next date 29.08.2018”

xxx

xxx

xxx

“Defendant No.1 and 2 proceeded against exparte.

No DW is present. Defendant evidence closed by order. Now to come up on 15.09.2018 for rebuttal evidence if any or for arguments. If any DW is available on next date of hearing, the same shall be recorded first.

Karan Aggarwal
Civil Judge (Junior Division)
Pathankot

Date of order:- 29.08.2018
Next date 15.09.2018”

On 29.08.2018, the petitioner was not present. Defendant evidence was closed by order and the case was adjourned to 15.09.2018 for rebuttal evidence. It was also specified in the order that if any DW is available on the next date of hearing, the same shall be recorded first. On 15.09.2018 the petitioner moved an application for summoning three witnesses. However, the said application was not entertained and no order was passed thereon.

Learned counsel for the petitioner states that on some dates, the petitioner was present but the case was adjourned because of the absence of counsel for the respondent No.1/plaintiff. She states that on one or two occasions due to unavoidable circumstances, the petitioner also could not be present. She states that petitioner is only the guarantor and the loan defaulters i.e. as defendants No.1 and 2 have already been proceeded against ex-parte. Grave prejudice would be caused if the petitioner is not permitted to lead his evidence by examining the witnesses which are sought to be examined. The petitioner only seeks two effective opportunities to cross-examine the witnesses proposed to be summoned, who are the record clerk of the UCO Bank and the Branch Manager of the Bank Railway Road Branch, Pathankot.

Notwithstanding the lapse on the part of the petitioner, Considering the aforesaid facts and circumstances, this petition is allowed. The impugned order to the extent of closing the evidence of the defendant is set aside. Ld. Trial Court may grant two effective opportunities for cross-examination of the petitioner and for examination of the witnesses mentioned in the application (Annexure P-4). This shall be subject to payment of costs of Rs.15,000/- to the plaintiff-respondent No.1

The revision has been disposed without notice to the respondents to avoid unnecessary delay and expenses. However, if the respondents have any grievance, they are at liberty to approach this Court for recalling this order.

(Harinder Singh Sidhu)
Judge

01.10.2018
Atul

Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes/No