

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

C.R.No.8005 of 2017 (O&M)

M/s Goddard Builders and Construction Pvt Ltd

....Petitioner

Versus

M/s Basic Developer (P) Ltd and Ors.

....Respondents

Date of Order: 29.5.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Chetan Mittal, Sr. Advocate with
Mr. Mayank Aggarwal, Advocate for the petitioner.

Mr. O.P. Goyal, Sr. Advocate with

Ms. Deep Shikha, Advocate for respondent No.1.

AMIT RAWAL, J (ORAL)

Present revision petition is directed against the order dated 29.9.2017 whereby the application submitted by the respondent-plaintiff for examination of Ajay Dagar as authorized person of the respondent-Company instead of Pawan Sachdeva, who was previously authorized by the respondent-Company to pursue the matter, has been allowed.

Facts of the case that the respondent-plaintiff instituted the suit for specific performance and declaration with consequential relief of permanent injunction in the year 2009. In the evidence, respondent-plaintiff examined Pawan Sachdeva as PW1, the authorized representative of the Company, by filing an affidavit in the examination in chief. Said witness was cross examined on 27.11.2015, which is evident from Annexure P.4, however, his cross examination was deferred but on the next date of hearing, respondent-plaintiff filed an application (P.5) seeking permission to change the authorized person for the purpose of pursuing the case in place

of said Pawan Sachdeva. Said application was contested by filing reply. However, the learned trial Court vide impugned order has allowed Ajay Dagar to substitute Pawan Sachdeva in evidence.

Learned counsel for the petitioner submitted that the trial Court has misconstrued the facts of the case and thus the impugned order suffers from illegality and perversity. He has drawn attention of this Court to para 3 of preliminary objections of the reply and prayed for clarification of the order.

Learned counsel for the respondent submitted that another Authorized person sought to be examined in evidence in place of previous witness was nothing but in addition to the statement already recorded and it would be domain of the trial Court to decide the admissibility of the same by looking into the evidence (chief as well as cross examination) of said Pawan Sachdeva at the final stage of the suit. Plaintiff has already closed evidence and suit is slated for evidence of the defendant.

After hearing learned counsel for the parties and appraising the paper book, I am of the view that the impugned order under challenge requires clarification in view of averments raised in para 3 of the Preliminary objection of the reply, which reads as under:

“3. That the respondent No.1 is not withdrawing either the evidence affidavit or the part cross-examination of Pawan Sachdeva. Let the Hon'ble Court take both the evidence affidavit and his part cross-examination into consideration while deciding the case. The case of the petitioner is proceeding on the premises that the plaintiff is withdrawing his evidence affidavit and his part cross examination. This is not correct. It is part of the record of the Hon'ble Trial Court. It is submitted what has come on

record by way of evidence affidavit and the cross examination will not be withdrawn by the plaintiff company nor is there any prayer anywhere.”

The stand of the respondent-plaintiff has been very fair and honest, for the trial Court has mis-interpreted the contents of the application by allowing Ajay Dagar to submit evidence by substituting evidence of Pawan Sachdeva. However, since the respondent-plaintiff has submitted that the plaintiff wanted to produce Ajay Dagar as their own witness over and above Pawan Sachdeva, I am of the view that all these factors would be seen by the trial Court at the time of final stage.

Disposed of.

May 29, 2018
manoj

^(AMIT RAWAL)
JUDGE

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