

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CR No.932 of 2018

Date of decision:12.02.2018

M/s Grand Infracon Pvt. Ltd.

... Petitioner

Vs.

Sujan Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sanjay Vij, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

The petitioner-plaintiff is in revision petition against the impugned order dated 11.01.2018 (Annexure P-1), whereby, its evidence in a suit bearing No.140 of 2016, has been closed by order.

Mr. Sanjay Vij, learned counsel for the petitioner-plaintiff submitted that plaintiff instituted a suit for declaration and specific performance of the agreement to sell dated 28.10.2010, wherein, the issues were framed on 29.09.2017. Thereafter, the case was adjourned to 21.10.2017 and on that date, the Presiding Officer was on special casual leave, therefore, the matter was adjourned to 01.11.2017. On 01.11.2017, no PW was present. However, the case was adjourned to 06.11.2017. On 13.11.2017, one PW Rajat Jeet Vaid was present, who was partly examined and the Presiding Officer had to attend the meeting at 3.30 p.m, thus, the matter was adjourned to 30.11.2017 for remaining cross examination of

PW1 Rajat Jeet Vaid as well as for entire evidence of the plaintiff. On 30.11.2017, five witnesses were present. The cross examination of PW2 and PW3 was completed but cross examination of PW1, PW4 and PW5 was deferred and the matter was adjourned to 07.12.2017 for evidence of defendants. On 07.12.2017, PW1 was present and his cross examination was complete. PW4 and PW5 were present but could not be examined as the Court time was over and the matter was listed for 20.12.2017. On the aforementioned date, counsel for the defendant did not appear despite the fact that PW4 and PW5 were present, therefore, the matter was adjourned to post lunch session. After post lunch session, cross examination of PW4 and PW5 was complete. PW6 was also present, who tendered his affidavit in examination-in-chief but was not in a position to face the test of the cross examination on account of his illness and in lieu thereof, costs of ₹3,000/- was imposed upon the plaintiff by adjourning the matter to 11.01.2018. Thereafter, on 11.01.2018, following impugned order has been passed:-

“M/s Grand Infracon Pvt. Ltd. Vs. Sujan Singh etc.

*Present: Sh. J.K.Dang, counsel for the plaintiff.
Sh. Sandeep Aneja, counsel for defendants
no.2 to 5.*

LRs of defendants no.1 & 6 and 7 to 9.

*Previous cost of Rs.3,000/- paid by plaintiff and
receipts no.059217 dated 11.01.2018 is placed on record.*

*PW6 Sushil Kumar Bhardwaj present and his
cross examination is complete. The evidence of plaintiff stands*

closed by court order.

Today the was also fixed for DWs but no DW is present.

*Adjourned is requested. Therefore, the case to come up for
DWs on 29.01.2018.*

Sd/-

(R.P.Goyal)

*Additional District Judge
Special Commercial Court
Gurugram 11.01.2018.”*

The factum of aforementioned order has been challenged in the present revision petition which is supported by an affidavit.

He further submitted that on the adjourned date when the impugned order was passed, a request was made to summon the witness as per the provisions of Order 16 Rule 7A CPC, i.e., the official of bank for the purpose of compliance of provision of Section 16(c) of Specific Relief Act, qua readiness and willingness but the Court did not entertain the request, resulting into aforesaid revision petition. He also submitted that he will take dasti summons and examine the aforementioned witness.

I have heard the learned counsel for the petitioner-plaintiff and appraised the paper book.

The orders, aforementioned, are not in dispute, much less, framing of issues on 29.09.2017. On few occasion, the witnesses of petitioner-plaintiff were not present, I am of the view that it is not a old suit, where the Court should have adopted the strict view.

Resultantly, the impugned order is set aside and in the interest of justice, one effective opportunity is granted to the petitioner-plaintiff to lead the entire evidence subject to costs of ₹10,000/- by taking the assistance of the Court, in accordance with law. The petitioner is also at liberty to take dasti summons of so called witness-Bank, in accordance with law.

Resultantly, the revision petition stands allowed.

(AMIT RAWAL)
JUDGE

February 12, 2018
savita

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