IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 1229 of 2016 (O&M)
Date of decision:02.04.2019

M/s Bhushan Power & Steel Limited through Insolvency Resolution Professional.

... Petitioner

Vs.

M/s Arsh International & others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ashwani Talwar, Advocate for the petitioner.

Mr. Vishal Gupta, Advocate for respondent Nos. 1 and 2.

AMIT RAWAL J. (Oral)

The present revision petition is directed against the impugned order dated 21.01.2016 (Annexure P-1), whereby an application of the petitioner-plaintiff for leading additional evidence by summoning the witness from the Excise and Taxation Department, Ludhiana II, has been declined.

Mr. Ashwani Talwar, learned counsel appearing on behalf of the petitioner submitted that the suit for recovery filed under Order XXXVII of the Code of Civil Procedure is based upon two bills for the period from 01.01.2007 to 31.03.2007 containing the element of deduction of payment of VAT (Value Added Tax).

After framing of issues in the year 2015, the evidence of the plaintiff was closed on 29.09.2015. DW-1 Rajesh Gupta appeared in the witness box in the months of December 2015 and January 2016, and was confronted with the question of refund of the VAT, which he emphatically denied. However, during the course of cross examination, he admitted the fact, on a specific question, that if the supply is made within the State, the VAT of the goods in the bills would have been reflected, which is the subject matter of this revision petition. It is in these circumstances, immediately after closure of the evidence of the defendants on 02.01.2016, an application for leading additional evidence was submitted by the petitioner on 15.01.2016, which has been summarily declined on 21.01.2016.

Learned counsel for the petitioner has submitted that to rebut the evidence of DW-1, he may be granted an opportunity to produce the evidence on record by leading additional evidence, subject to any terms and conditions, which this Court may deem fit appropriate.

Per contra, learned counsel appearing on behalf of respondent Nos. 1 and 2 submitted that the alleged receipts of the goods, relied upon by the petitioner, were emphatically denied by DW-1 and the impugned order does not suffer from illegality and perversity. A person, in such circumstances, cannot be permitted to fill up the lacuna, who lost his rights, much less, there is no issue of rebuttal, thus, urges this Court for dismissal of the present revision petition with costs.

I have heard learned counsel for the parties, appraised the paper book and am of the view that there is some force and merit in the submission of Mr. Talwar.

The issues were framed by learned trial Court on 10.07.2015.

It is a case of recovery, based on the plaintiff's bills. The receipt of goods was emphatically denied by the defendants. The attention of this Court was drawn towards the cross-examination of DW-1 Rajesh Gupta, who on specific question put by learned counsel for the petitioner, during the course of cross examination, admitted the fact that the VAT is always reflected in the bill and he did not obtain refund of the VAT, levied in the bill. DW-1 in his cross examination denied to some extent, which is the subject matter in present lis and therefore, the petitioner has sought additional evidence ibid, which may help the Court for proper adjudication. It would still be appreciated whether any refund was applied or not, which may go in favour of either of the parties. In such circumstances, I am of the view if such an application is allowed, would not amount to filling up the lacuna.

Accordingly, the impugned order, under challenge, is not sustainable in the eyes of law and the same is hereby set aside. The application for leading additional evidence is allowed. The petitioner through Insolvency Resolution Professional is granted an opportunity to lead evidence, in accordance with law, subject to the right of cross-examination and any rebuttal evidence, on behalf of the respondents-defendant.

The present revision petition stands allowed, subject to the costs of ₹5,000/- to be paid to defendant Nos.2 and 3.

(AMIT RAWAL)
JUDGE

April 02, 2019
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Whether Speaking/Reasoned Yes/No
Whether Reportable Yes/No