

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

202

CR-2486-2015

Date of Decision: 01.03.2019

Karnail Singh Sansoya

... Petitioner

Vs.

Baljinder Singh Hira

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr.Naveen Batra, Advocate
for the petitioner.

Mr. L.S.Sidhu, Advocate
for the respondent.

Amol Rattan Singh, J (Oral)

By this petition, the petitioner challenges the orders of learned trial Court (Civil Judge, Senior Division), Hoshiarpur, dated 19.02.2015 and 18.03.2015.

By the Ist order, the evidence of the petitioner, i.e. defendant in the suit in which that order has been passed, was closed on the ground that despite a last and final opportunity granted to the petitioner on 05.02.2015 to conclude his evidence, he had still not done so.

Vide the order dated 18.03.2015, an application filed by the petitioner for leading additional evidence was dismissed, on the ground that the evidence already having been closed vide the previous order dated 19.02.2015, it could not now be allowed to be led by way of an application seeking additional evidence.

Learned counsel for the petitioner submits that the evidence that is now sought to be led, is by way of (what is contended to be) a attested copy of a “Ship Deck Log Book (M.V. Nabloza Ship)”, as also an attested copy of “Liberian Sop's article page (M.V. Nabloza Ship)”, (both the documents sought to be led by way of secondary evidence).

He submits that the said documents are necessary to be proved in the suit filed by the respondent herein, seeking specific performance of an agreement dated 10.01.2007, because the respondent/plaintiff contends that the agreement was executed in writing in Germany between the parties, whereas the petitioner, (as per his contention), was not even present in Germany on that date and was in fact on the aforementioned ship on the high seas, he being an officer in the Merchant Navy.

Learned counsel for the respondent on the other hand submits that a number of opportunities having already been granted to the petitioner to lead his evidence, and he not having done so, the impugned orders are not required to be interfered with.

Having considered the matter, though what learned counsel for the respondent says would otherwise be unexceptionable, however, (as has been duly noticed in the impugned order dated 18.03.2015), the petitioner does not wish to lead any oral evidence in respect of the said documents, such evidence already having been led by him in the context of issues framed. Hence, without making any comment whatsoever on the merits of the case of either side, the petition is disposed of with a direction that upon the petitioner making an application for leading secondary evidence before the trial Court, the said application would not be dismissed on the ground that his evidence has been closed vide the impugned order, and would be

looked at on merits, as to whether such secondary evidence is admissible or not, that is to say that the application shall not be dismissed on the ground that it has been moved at this stage, but would be examined to see whether such secondary evidence is permissible or not in terms of Section 65 of the Indian Evidence Act, 1872, and an appropriate order passed by the trial Court thereafter. However, as submitted by learned counsel, no oral evidence would be allowed to be led in support of the said documents, in any case.

Consequently, the impugned orders are set aside, with the aforesaid directions instead given and this petition accordingly disposed of.

(AMOL RATTAN SINGH)
JUDGE

01.03.2019
anju/dinesh

Whether speaking/reasoned : Yes
Whether reportable : No