

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 6793 of 2017

Date of Decision: 07.05.2019

Mr. Cezary Brymora Proprietor of M/s Brymorex

.....Petitioner

Vs.

M/s ILK IMPEX Limited

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Amit Dwivedi, Advocate,
for the petitioner.

None for the respondent.

AMOL RATTAN SINGH, J. (ORAL)

1. By this petition, the petitioner challenges the order of the learned Civil Judge (Junior Division), Ludhiana, dated 30.08.2017, whereby the application filed by the petitioner under Order 16 Rule 6 read with Section 151 CPC, for issuance of summons to produce documents, has been dismissed.

2. Learned counsel for the petitioner submits that the trial Court has wholly misappreciated the import of Rule 6 of Order 16 of the CPC, because the said Rule does not postulate the summoning of any person subsequently, but only the production of a document even if the person who is to produce the document has not been summoned to give evidence.

3. The aforesaid arguments having been made by learned counsel for the petitioner, it is first to be noticed that the matter was passed over, in view of the fact that no counsel appeared for the respondent, which was also so on the last date of hearing, i.e. 22.04.2019, (with the petition having been shown in the urgent

motion list on that date also, consequently upon an order passed on 21.09.2018).

It is also to be noticed that upon notice of motion having been issued by this Court (co-ordinate Bench) on 03.10.2017, as per the first report of the Registry dated 02.12.2019, notice could not actually be issued as the process fee was not filed.

Thereafter, on 16.04.2018, the matter had been adjourned to 21.09.2018, with the aforesaid fact recorded, it further having been directed that “on necessary compliance”, notice be issued, to be returned on 21.09.2018.

On that date, the respondent-company was shown to be served, as per the report of the Registry dated 18.09.2018.

Learned counsel for the petitioner has, today, also produced in Court an order passed by the learned Civil Judge (Junior Division), Ludhiana, on 03.10.2017, (i.e. on the very date that notice of motion was issued by this Court to the respondent), directing the trial Court to adjourn the proceedings to beyond the date fixed by this Court. The order of the trial Court records the fact that on that very date, i.e. 03.10.2017, this Court had passed the aforesaid order, and consequently, the matter had been adjourned by it to 11.01.2018, to await the final order of this Court, with the order of the trial Court having been passed in the presence of counsel for the respondent-defendant (as has been produced in Court today).

Thus, it would be obvious that the respondent is aware of the institution of this petition and the order passed by this Court. Upon specific query to learned counsel for the petitioner, he submits that even yesterday, i.e. 06.05.2019, the trial Court has again adjourned the suit before it till 26.07.2019, on the ground that this petition is still pending before this Court.

Despite the above, again none has appeared for the respondent today, even on the matter having been called out for the 2nd time, in the post lunch session.

That being so, obviously the respondent is not opposing this petition, possibly for the reason that it is the suit of the petitioner-plaintiff that is getting adjourned from time to time before the trial Court.

4. Be that as it may, learned counsel for the petitioner having pointed to the specific provision contained in Order 16 Rule 6, the said provision is reproduced hereinunder:-

“Summons to produce document-- Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.”

Very obviously, the aforesaid provision is to the effect as has been contended by learned counsel (recorded in paragraph 2 hereinabove).

5. On the other hand, Rule 14 of Order 16 reads as follows:-

“Court may of its own accord summon as witnesses strangers to suit--- Subject to the provisions of this Court as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary (to examine any person, including a party to the suit) and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.”

6. Thus, the aforesaid rule is applicable when, even without any application filed by any party, the Court itself considers it necessary to order the production of a document, with an order subsequently to be passed, upon production of document, as deemed to be just by the Court.

On the other hand, as already stated, Rule 6 of Order 16 stipulates that even when a person who is not required to be summoned to give evidence, is in possession of a document that is considered necessary to be produced, a direction to that effect may be given, with the person in possession of the document not necessarily appearing before the trial Court, as long as the document itself is caused to be produced.

Though in essence the effect of both the provisions may be the same, however, in the opinion of this Court, simply because an application filed earlier by the petitioner-plaintiff under Order 16 Rule 14 (read with Section 151 of the CPC), had been dismissed, it would not debar an application to be filed by him even for production of the same document under a different provision, wherein a party producing it is actually not required to be present, though of course in the present case the party to whom a direction is sought to produce the accounts, is actually the respondent-defendant who is being duly represented before the trial Court.

More importantly, as has been contended by learned counsel for the petitioner with no rebuttal thereto in the absence of the respondent (it not even having appeared before this Court despite service), the document that is sought to be produced before the trial Court, is the bank account statement of the defendant in a particular bank, in respect of a specific account number for the period 01.04.2012 till 30.06.2012, the contention of the petitioner being, that on 07.05.2012 an amount of USD 17,350.00 was transferred by the petitioner into the

account of the respondent-company from a bank in Poland, in support of which Annexure P-5 has been annexed with this petition, (seen to be a document largely in the Polish language), showing however transfer of such amount from the Raiffeisen Bank in Poland, to the Allahabad Bank in Ludhiana.

Consequently, without making any comment on the correctness or otherwise of Annexure P-5, or the contention that money was actually transferred by the petitioner to the respondent, which naturally would be seen by the trial Court upon the bank statement of the respondent being produced before that Court and other evidence led, the impugned order is set aside, with the Branch Manager of the Allahabad Bank, IIFB Branch, Ludhiana, directed to produce the bank statement before the trial Court, in respect of the bank account bearing no. “50033156312”, for the period 01.04.2012 till 30.06.2012, on the next date of hearing before that Court, which is stated to be 26.07.2019 (the said date having been given by learned counsel for the petitioner).

The petition is thus allowed, in the aforesaid terms.

May 07, 2019
nitin/pk

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes