

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 1107 of 2019 (O&M)
Date of decision: 5.3.2019

M/s M. G. Kitchenware

.. Petitioner

v.

M/s Delite Plastic Moulding Industries

.. Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Rajesh Punj, Advocate for the petitioner.

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AVNEESH JHINGAN, J. (Oral)

The present civil revision petition has been filed being aggrieved of the order dated 29.1.2019 passed by the Civil Judge (Junior Division), Ambala (hereinafter described as 'Civil Court') dismissing the application filed by the petitioner-defendant (hereinafter described as 'the petitioner') under Section 151 of the Code of Civil Procedure, 1908 for permitting him to play the mobile handset as well as CD containing conversation and to put the same to witness PW1-Dayal Chand Gupta during his cross-examination.

The facts in brief are that the respondent-plaintiff (hereinafter described as 'the respondent') filed a suit for recovery of ₹3,29,000/- along with interest @ 12% per annum. The petitioner had given a specific design

and quality for supply of handles to the respondent. Thereafter a dispute arose between the parties and the respondent filed a suit for recovery of the payment. The suit was filed on 13.6.2012. Upon notice, written statement was filed by the petitioner. Issues were framed on 21.2.2013. On 4.4.2014, PW1-Dayal Chand Gupta appeared as a witness and he was cross-examined. In September, 2017, the petitioner filed an application for amendment of the written statement. The same was allowed and amended written statement was filed. Thereafter, an application was filed for re-calling PW1-Dayal Chand Gupta for cross-examination qua the facts mentioned in the amended written statement. The same was allowed by the Court vide order 19.7.2018. The operative part of the said order is reproduced below:

“In the light of the reasons mentioned above, the defendant/applicant is hereby granted the opportunity to cross-examine the witness Dayal Chand, **who is hereby recalled for the limited purpose of cross-examination to the extent of fresh facts that were pleaded in the amended written statement.** It shall be taken as last opportunity to cross-examine the witness, after which no more opportunity shall be granted for the said cross-examination.”

[Emphasis supplied]

The said witness appeared on 21.11.2018. Instead of cross-examining him, petitioner moved an application seeking permission to play the mobile handset as well as CD conversation and to put the same to PW1-Dayal Chand Gupta during his cross-examination.

It would be pertinent to mention here that the alleged

conversation is between the petitioner and one Vinay Gupta. The application was dismissed by the Civil Court relying upon the statement of Dayal Chand Gupta stating that Vinay Gupta does not stay with him and carries on separate business. Aggrieved of the said order, the present revision petition has been filed.

Learned counsel for the petitioner argues that as the amendment of the written statement was allowed, the petitioner should not only be allowed to cross-examine the witness qua the fresh facts pleaded but there should be an open field for him as a matter of right to play mobile handset as well as CD conversation. He relies upon a decision of the Supreme Court in **Laxmibai (Dead) thr. Lrs. and another v. Bhagwantbuva (Dead) thr. Lrs. and others**, AIR 2013 SC 1204. He contends that after amendment of the written statement, the respondent has not examined any witness to rebut the said pleadings.

The contention raised is not well-founded. The entire endeavour of the petitioner is to delay the proceedings in the recovery suit. A shield is being put forth on the basis of the amendment allowed of the written statement. It would be pertinent to mention that the relevant fact has been withheld from the court, in spite of a pointed query by this Court, learned counsel for the petitioner has not been able to state as to what is the status of Vinay Gupta in the respondent-firm. From the memo of parties, it is evident that M/s Delite Plastic Moulding Industries has been arrayed as respondent through its partner-Ashish Tayal. There is nothing on record to show that agreement was entered into by the petitioner with the respondent or Vinay Gupta was party to the agreement.

Dayal Chand Gupta appeared as PW1 and in his cross-

examination he specifically stated that Vinay Gupta stays separately and has his own business and Dayal Chand Gupta has no business relationship with Vinay Gupta.

There is an alleged conversation between the proprietor of the petitioner-concern and Vinay Gupta with regard to supply of handles. The conversion is not relevant until and unless it is established that what is the position of Vinay Gupta in the respondent-firm i.e. M/s Delite Plastic Moulding Industries. It has not even been alleged that Vinay Gupta is a partner in the respondent-firm. Instead of availing the last opportunity provided by the Civil Court to cross-examine Dayal Chand Gupta, the petitioner moved the said application.

The reliance on the decision of the Supreme Court in **Laxmibai (Dead) thr. Lrs. and another's case (supra)** does not enhance the case of the petitioner. In the said judgment, it has been held that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Learned counsel for the petitioner has not disputed the fact that the pleadings raised by the petitioner in the written statement have not been rebutted. In such circumstances, the proposition in the said judgment would not come to the rescue of the petitioner.

Having failed to show the relevance of the recording, the petitioner has not been able to make out a case for allowing the recording to be played during the cross-examination of PW1- Dayal Chand Gupta.

No case is made out for interference in the impugned order.

The present revision petition is dismissed.

However, it is clarified that nothing said in this order shall be construed as an expression of opinion on the merits of the suit.

(AVNEESH JHINGAN)
JUDGE

5.3.2019
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No