

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

**SAO No.85 of 2015 (O&M)
Date of Decision: April 03, 2019.**

M/s J.S. Rice Mills Bhunerheri and another

.....APPELLANT(s).

VERSUS

Punjab State Warehousing Corporation Limited and another

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Vishal Gupta, Advocate
for the appellant (s).

None for the respondents.

SURINDER GUPTA, J.

This is appeal against the order dated 07.09.2015 passed by District Judge, Patiala remanding the case to the trial Court with observations as follows:-

“11. In the present case, the suit has been filed by Punjab State Warehousing Corporation Limited, SCO No.74-75, Sector 17, Chandigarh, through its Managing Director and Punjab State Warehousing Corporation Limited, near New Grain Market, Sirhind Road, Patiala, through its District Manager. The issues were framed in this case on 26.2.2010 and the case was posted for evidence of the plaintiffs. Though on five successive occasions, no evidence of the plaintiffs was present but on the sixth date i.e. 5.12.2012 affidavits of two PWs namely Sh. Gurnam Singh and Sh. Hemant Gupta Ex.PW1/A and Ex.PW2/A respectively were tendered in

evidence. Counsel for the defendants did not cross-examine them. Their cross-examination was deferred at request of learned counsel for defendants and case was adjourned to 26.4.2012 for the purpose of their cross-examination. On 26.4.2012 PW Sh.Gurnam Singh had sent request for exempting his presence on the ground of personal work. No other PW was present. The case was adjourned to 26.7.2012. On 26.7.2012 no PW was present and case was adjourned to 15.10.2012. On 15.10.2012 no PW was present and case was adjourned to 5.12.2012 for PWs at own responsibility. On 5.12.2012 PW Hemant Gupta was present for his cross-examination but learned counsel for defendants stated at the bar that he was not ready to cross-examine the witness and prayed for short date. Therefore case was adjourned to 10.1.2013. On 10.1.2013 no PW was present. On request, case was adjourned to 16.2.2013. On 16.2.2013 no PW was present and case was adjourned to 26.3.2013. On 26.3.2013 no PW was present and case was adjourned to 7.5.2013. On 7.5.2013 witnesses were present since morning. Case was called repeatedly but nobody had turned up till 2.00 pm. However, Sh. DD Sharma, Advocate had put in appearance later in the day, the case was adjourned for 26.7.2013. On 26.7.2013 no Pw was present and case was adjourned to 2.9.2013. On 2.9.2013 PW Hemant Gupta was present but none appeared on behalf of defendants to cross-examine the witness. When the case was called, counsel for defendants had appeared and requested for adjournment citing some personal problem, as such witnesses were bound down and case was adjourned to 23.9.2013. On 23.9.2013 no witness of plaintiffs was present and case was adjourned to 15.10.2013. On 15.10.2013 the cross-examination of PW2 was conducted partly and further

cross-examination was deferred for want of record and case stood adjourned to 16.11.2013. So this state of affairs continued for several dates, ultimately evidence of the plaintiffs was closed by order on 2.8.2014 after cross-examination of PW2 Hemant Gupta had been concluded. Thereafter case was fixed for evidence of the defendants. Plaintiffs had moved an application for recalling the order dated 2.8.2014 and allowing them to examine Gurnam Singh but that application was declined by the trial Court vide order dated 2.9.2014. I find that the application deserved to be allowed and plaintiffs should have been given an opportunity to cause appearance of Sh. Gurnam Singh for the purpose of his cross-examination. No doubt plaintiffs have been guilty of taking frequent adjournments and the trial Court has been quite liberal in granting such adjournments but at the same time the conduct of the defendants has also been pointing out towards stretching of proceedings, rather than making efforts to wrap up such proceedings. As a perusal of the interim orders goes to show that on a few occasions counsel for the defendants did not put in appearance and appeared at the fag end of the day only asking for adjournment. When statement of Pws had been recorded in examination-in-chief their cross-examination should have been got done on that very day. Counsel for defendants, while asking for adjournment had not disclosed any plausible or convincing reason for deferring of the cross-examination. The trial Court should have been vigilant enough to get the same conducted on that very day. It having not been done, the result was that evidence of plaintiffs was closed by order. Since statement of Sh. Gurnam Singh, PW1 had not been completed by way of cross-examination the same could not be read in evidence. When Gurnam Singh was

offered to be produced in the Court by the plaintiffs, the trial Court wrongly declined to accept that offer. A considerable amount of public money stated to be Rs.2,70,775/- around is involved. The trial Court should have been careful enough to ensure that such money was not squandered away for small reasons. The trial Court in order dated 2.9.2014, has observed that the plaintiffs had availed of several opportunities to conclude their evidence but failed to produce Sh. Gurnam Singh, PW1 for his cross-examination as Sh. Gurnam Singh had gone abroad. The comparative mischief has been more in disallowing the application as compared to the one which would have been there if application had been allowed. The plaintiffs have been non-suited for the reason that since Gurnam Singh had not been cross-examined, his statement could not be read in evidence. Therefore, documents proved by him also remained unproved. Those documents were quite important and the vital for just decision of the case.

12. During course of arguments, counsel for appellants has prayed that case be remanded to the trial Court with a direction to allow Sh. Gurnam Singh, PW1 to be cross-examined or in the alternative to allow the plaintiffs to examine some other person in his place. Though this request is being opposed by counsel for respondent vehemently but I find that that it deserves to be allowed in the interest of justice. Therefore, I find it necessary in interest of justice to remand the case since retrial is considered necessary in light of observations made above. Accordingly, the impugned judgement and decree are set aside by way of acceptance of this appeal and case is remanded to the Court of Ms. Deepika, Addl. Civil Judge (Senior Division), Patiala, with a direction to allow the plaintiffs either to cause appearance of Sh.

Gurnam Singh, Pw1 for the purpose of his cross-examination or in the alternative allow the plaintiffs to examine the present incumbent/ District Manager or concerned officer/official to prove the documents. Such exercise be completed within a period of one month from the date of receipt of file in the trial Court. The defendants would be allowed to cross-examine the witness and the trial Court should refrain from granting liberal adjournments just at the asking of counsel for the parties. Thereafter two reasonable opportunities of ten days each be given to the defendants to lead any evidence in rebuttal and then after hearing arguments to decide the case afresh.”

Respondents Punjab State Warehousing Corporation had filed suit for recovery of ₹2,70,775/-, which was dismissed by the trial Court as cross-examination of PW Gurnam Singh was not completed.

Learned counsel for the appellants has referred to the observations of Hon'ble Apex Court in cases of *Syeda Rahimunnisa Vs. Malan Bi(Dead) by Lrs and Anr. 2016(10) SCC 315; Hameed (D) by Lrs and Ors Vs. Kummottummam Kunhi P.P. Amma (D) by Lrs. 2007(15) SCC 155*; and by this Court in cases of *Hasham and others Vs. Jhangi Ram 2005(1) R.C.R. (Civil) 536; Gandhrab Raj Sharma Vs. Daulat Singh and Ors. 2007(2) ICC 174*, and has argued that remand of case cannot be permitted to fill up the lacuna. There was lapse on the part of respondents that they could not produce PW Gurnam Singh despite several opportunities. The trial Court after affording numerous opportunities, closed the evidence of respondents-plaintiffs. The application filed by them to recall that order was also dismissed. The mere fact that the plaintiff is a

towards a party while remanding the case.

Perusal of the observations of learned first Appellate Court shows that the witnesses of plaintiff have been appearing on several dates but have gone unexamined on the request of learned counsel for the appellants-defendants in the trial Court or due to his non-availability. Witness Gurnam Singh after submitting his affidavit in examination-in-chief had appeared on many dates for his cross-examination, which was not conducted by counsel for the appellant. It appears that thereafter he had gone abroad and could not be produced. Though there is lapse on the part of plaintiffs but the counsel for the appellants-defendants had also contributed in non-examination of this witness with his conduct. In case, the witnesses examined by the respondents-plaintiffs had been cross-examined the day, they put in appearance, the evidence of plaintiffs could be completed at earlier stage.

I agree with learned counsel for the appellants that all the parties to the suit are to be treated equally but in this case, first Appellate Court has rightly looked into the facts of the case while observing that the public money cannot be allowed to be swindled, particularly when the conduct of counsel for the appellants-defendants before the trial court was not co-operative. He appears to have deliberately avoided to cross-examine the witnesses on the day, they appeared. On some occasions, the witnesses had to wait for whole of the day and then had gone unexamined. Learned trial Court failed to check such unworthy conduct of counsel for the appellants, which has not only resulted in miscarriage of justice but has also caused a lot of harassment to witnesses, who had to come time and again to

depose. I hope and believe that learned trial Court after remand of case, will not allow such conduct to be repeated to detriment of witness or party to the suit.

I have also gone through the citations referred by learned counsel for the appellants-defendants. The matter in issue in case of ***Gandhrab Raj Sharma Vs. Daulat Singh and Ors.(supra)***, was the remand of case by allowing appointment of local commissioner. In case of ***Hameed (D) by Lrs and Ors Vs. Kummottummam Kunhi P.P. Amma (D) by Lrs. (supra)***, plaintiffs had been allowed several opportunities to produce documents and the order of the High Court to allow the production of such documents was considered as filling up of lacuna. In case of ***Hasham and others Vs. Jhangi Ram (supra)***, the Appellate Court had held that the trial Court had not given any specific finding on the controversy between the parties under issue No.1 and remanded the case. The order passed by the Appellate Court below was set aside with the observations that the first Appellate Court was competent to decide issues No.1 and 2 by itself.

The citations referred by learned counsel for the appellants are based on different set of facts and are not applicable to the facts and circumstances of the present case. In the present case, the witness of the plaintiffs had been appearing before the trial Court on several dates of hearing but not cross-examined. As a result of this, the statement of PW1 Gurnam Singh could not be completed as he had gone abroad. Learned first Appellate Court has rightly observed that plaintiffs be allowed to produce PW1 for his cross-examination or liberty be allowed to plaintiffs to produce any other witness in his place. The argument of learned counsel for the

appellants that remand of the case amounts to giving permission to the plaintiffs to fill up the lacuna, is without basis and is discarded.

This appeal has no merits. Dismissed.

April 03, 2019.
Sachin M.

(SURINDER GUPTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>