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

CR No.2567 of 2017 (O&M)

Date of decision: January 28, 2020

Satpal Garg

.....Petitioner

Versus

Sukhdev Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Kanwar Pahul Singh, Advocate for the petitioner.

Mr. B.D. Sharma, Advocate for respondents No.1 to 5.

MAHABIR SINGH SINDHU, J

Present petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 16.02.2017 passed by the learned Civil Judge (Senior Division), Amritsar, whereby the evidence of the petitioner-defendant was closed during the proceedings under Order 39 Rule 2-A of the Code of Civil Procedure, 1908 (for short 'CPC'). Further challenge is to the order dated 16.03.2017, whereby, recalling of the above said order is rejected.

It is contended by the learned counsel for the petitioner that he was partly cross-examined on 30.11.2016, 11.01.2017 and 19.01.2017, but ultimately, on 16.02.2017, his evidence was closed without any lapse on his part. Thus, the impugned order is not legally sustainable.

On the other hand, learned counsel for the respondents

opposed the prayer and submitted that numerous opportunities were

granted to the petitioner for his cross-examination, but he deliberately delayed the proceedings just to frustrate the contempt petition.

Heard learned counsel for both the sides and perused the paper-book.

It transpires that respondents filed a suit for permanent injunction against the present petitioner as well as three other defendants. During the pendency of the Suit, interim orders dated 19.02.2009 and 26.02.2009 were passed by the learned trial Court and on account of disobedience of the above orders, contempt petition under Order 39 Rule 2-A of CPC was filed. In the contempt petition, evidence of the parties started on 18.12.2015. Examination-in-chief of the petitioner, as RW-4, was recorded on 17.08.2016 and thereafter, numerous opportunities were granted to him, but he did not come forward to face the cross-examination. Also noteworthy that on earlier occasion, impugned order dated 16.03.2017 was challenged in Civil Revision No.2983 of 2017 filed by co-defendant-Avinash Mahindru, but the same was dismissed.

Learned trial Court while rejecting the prayer of the petitioner for recalling of the order dated 16.02.2017, observed as under:-

“5. It is opined that the present petition is fixed for evidence of the respondent since 18.12.2015. Number of opportunities were availed by the respondent no.1 & 4 but failed to conclude their evidence. No doubt, the examination-in-chief of the applicant Satpal Garg was recorded on 17.08.2016 as RW4 and his cross-examination was deferred on the request of opposite counsel but thereafter Satpal Garg failed to appear on subsequent four effective dates. He only appeared on 30.11.2016 and was partly cross examined. Later on 11.1.17, he was bound down on request of opposite counsel and matter was adjourned for 21.1.17. However, despite bound down he did not come

present neither on 21.1.17 nor on further date i.e. 13.2.17. Therefore, his request for exemption was declined by the court on 16.2.17 on next date. As no other witness of the respondent was present on 16.2.17, therefore, the evidence of the respondents was closed by order after considering the status of the file. At this stage, if the application is allowed, it would amount to recall its own order which is not permissible. Accordingly, the application of Satpal Garg respondent No.2 is ordered to be dismissed.”

From perusal of the above observations, it is apparently clear that petitioner was deliberately avoiding the cross-examination just to delay the contempt proceedings with ulterior motive, thus, the contention that he was not at fault, deserves to be rejected. This Court while dismissing the Civil Revision No.2983 of 2017 filed by co-defendant (performa-respondent No.7), namely Avinash Mahindru, specifically observed that all the four defendants were in league with each other to delay the proceedings by misusing the process of law and relevant part of the order dated 28.04.2017, reads as under:-

“In fact, it seems that all the four respondents in the contempt petition were in league with each other and they were trying to delay the proceedings by misusing the process of law. In this view of the matter, it is unhesitatingly held that the learned trial court was forced to pass the impugned order dated 16.3.2017 and the same deserves to be upheld.”

In view of the facts and circumstances discussed hereinabove, this Court is of the considered opinion that present petition has been filed just to delay the contempt proceedings with bad faith and thus, the same is complete misuse of the process of the Court. Consequently, there is no option except to dismiss the petition with costs of ₹5,000/- to be paid to plaintiffs-respondents No.1 to 5.

Ordered accordingly.

Learned trial Court is requested to proceed with the matter expeditiously, if there is no legal impediment.

The above observations may not be construed as an expression of opinion on the merits of the case.

(MAHABIR SINGH SINDHU)
JUDGE

January 28, 2020

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Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No