

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(226)

CR-7410 of 2018 (O&M)
Date of Decision: 12.12.2022

Alok Sharma

...Petitioner

Versus

M/S Marshal Trading Co. & Others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. I. S. Pabla, Advocate, for the petitioner.

Mr. Madan Gupta, Advocate, for respondent No.1.

HARKESH MANUJA, J.(ORAL)

By way of present appeal, challenge has been made to an order dated 26.09.2018 (Annexure P-4) passed by the Civil Judge (Jr. Divn.), Kurukshetra, whereby prayer made at the instance of petitioner-defendant for summoning of one witness namely Vikas Garg-CA, has been declined.

Brief facts of the case are that respondent-plaintiff filed a suit for recovery against the petitioner/defendant based on supply of two generator sets. Upon notice, the petitioner/defendant appeared and filed written statement controverting the averments regarding supply of generators. Issues were framed and respondents/plaintiffs concluded its evidence. Thereafter, the matter was fixed for recording of evidence of petitioner/defendant. While the evidence of the petitioner/defendant was going on, an application came to be filed for the purpose of seeking Court assistance so as to summon Sh.Vikas Garg, CA as witness. It is the said application which has been declined by the Trial Court while passing the order dated 26.09.2018.

Learned counsel for the petitioner contends that though two audit

reports pertaining to the financial Years 2012-13 and 2017-18 were produced on record from the side of petitioner/defendant as Ex.DW4/A and Ex.DW4/B, however, the same were objected to by the respondents/plaintiffs on account of mode of proof which necessitated the filing of application at his instance for the purpose of summoning of his CA namely Sh.Vikas Garg. Learned counsel for the petitioner submits that the evidence and statement of CA namely, Vikas Garg who prepared the aforementioned two reports under his signatures is very much necessary for complete and effective adjudication of the case in hand and he further submits that Trial Court went wrong while declining the application merely for the reason that name of Sh.Vikas Gage, CA was never mentioned in the list of witness attached with the written statement.

On the other hand, learned counsel for the respondent/plaintiff submits that the application has been filed merely for the purpose of delaying the trial in the suit which is in fact for recovery. Learned counsel for the respondent also submits that once the name of CA Sh.Vikas Garg was never mentioned in the list attached with the written statement, the order dated 26.09.2018 was validly passed by the Trial Court.

I have heard learned counsel for the parties and gone through the paper book. I find substance in the submissions made on behalf of petitioner. Once an objection with regard to mode of proof has been raised at the instance of respondent/plaintiff to the proof of two audit reports i.e. Ex.DW4/A and Ex.DW4/B which have been prepared under the signatures of CA of petitioner/defendant namely Sh.Vikas Garg, the presence of this witness, in order to prove the abovesaid two reports is much necessary as the same is even going to help the Court to adjudicate upon the dispute in complete and effective matter.

Still further, in the facts and circumstances of the present case, the Trial Court failed to exercise jurisdiction vested in it. While exercising power under Order 16 of the Code of Civil Procedure, the trial Court even went wrong while recording that as the name of the witness was not mentioned in the list attached with the written statement therefore, his summoning could not be ordered. In fact sub-Rule 3 to rule(1) of Order 16 of the Code of Civil Procedure enables the Court to permit summoning of even those witnesses whose name did not find mention in the list of witnesses as provided by the parties under Sub Rule 1 of Rule 16 CPC. Thus, in view of the above, I find substance in the present revision petition and the impugned order dated 26.09.2018 (Annexure P-4) passed by the trial Court is ordered to be set aside, permitting the Trial Court to issue process so as to summon CA-Sh.Vikas Garg as witnesses from the side of petitioner/defendant.

Keeping in view the fact that suit for recovery which is pending before the trial Court for the past almost 8 years, I request the Trial Court to dispose of the suit within a period of 6 months from the date of receipt of the copy of this order so that the equities can be balanced between the parties.

Pending applications, if any, are disposed of accordingly.

(HARKESH MANUJA)
JUDGE

12.12.2022
anil

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