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

CRM-M-665-2023 (O&M)
Date of Decision: 17.02.2023.

RAJESH KUMAR **... PETITIONER**

VS.

SAHIL SPINTEX LIMITED AND ORS. **.. RESPONDENT**

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present : Mr.Yogesh Goel, Advocate, for the petitioner.

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VIVEK PURI, J.(ORAL)

CRM-5133-2023

This is an application for placing on record copy of the order dated 20.07.2016 passed by ITO Mansa as Annexure P-9.

For the reasons stated in the application, the same is allowed. Annexure P-9 is taken on record, subject to all just exceptions.

Registry is directed to tag the same at appropriate place.

Application is disposed of.

CRM-M-665-2023

The petitioner has assailed the order dated 16.12.2022 passed by the Court of learned Additional Chief Judicial Magistrate, Mansa, vide which the request of the petitioner for his cross-examination by the respondent(s) has been declined.

Learned counsel for the petitioner contends that the petitioner has instituted a complaint under Section 138 of the Negotiable Instruments Act against the respondent(s). The petitioner had moved an application under Section 311 Cr.P.C. for permission to place on record order (Annexure P-9) but the same was declined in terms of the order 08.09.2022 by the learned trial Court.

The petitioner had assailed the said order in the Court of Session and vide judgment dated 04.10.2022, Annexure P-3, the revision petition was allowed and the permission was granted to the petitioner to tender in evidence the document sought to be brought on record.

The respondent(s) had assailed the aforesaid judgment dated 04.10.2022 vide CRM-M-53599-2022 and in terms of order dated 18.11.2022, the same was disposed of in the following terms:-

> "The petitioner through instant petition is seeking quashing of order dated 04.10.2022 (Annexure P-1) whereby learned Sessions Judge, Mansa has set aside order dated 08.09.2022 (Annexure P-2) passed by learned Additional Chief Judicial Magistrate, Mansa. The respondent in terms of

> Section 311 Cr.P.C moved an application before Trial Court seeking permission to place on record copy of order dated 20.07.2016 passed by Income Tax Officer.
>
> Learned JMIC, declined application of the respondent, however, learned Sessions Judge, vide impugned order dated 04.10.2022(Annexure P-4) allowed revision petition of the respondent herein.
>
> Learned counsel for the petitioner at the outset submits that the petitioner may be allowed to cross examine the witnesses who had led the evidence in the form of order dated 20.07.2016 passed by Income Tax Officer.
>
> In view of limited prayer made by learned counsel for the petitioner and keeping in mind, principles of natural justice, learned Trial Court is directed to permit the petitioner to cross examine the witnesses who had led the evidence in form of order passed by the Income Tax Officer.
>
> Disposed of."

Thereafter, the petitioner had moved an application, Annexure P-7 making a request that in the event, the respondents intend, they may conduct cross-examination of the petitioner. However, the request has been declined in terms of the impugned order.

It is significant to note that the assessment order (Annexure P-9) has been tendered in evidence in the statement of the counsel for the petitioner in the trial Court. The document has been tendered in evidence on behalf of the petitioner. In terms of the aforesaid order dated 18.11.2022 passed by the Coordinate Bench of this Court, the learned trial Court was directed to permit the respondents (in the present petition) to cross-examine the witnesses who had led the evidence in the form of order passed by the Income Tax Officer. Merely because the order has been tendered in evidence by the counsel for the petitioner, it may not be appropriate to decline the request of the petitioner. The respondents have to be afforded an opportunity for further cross-examination, if any, upon the petitioner in pursuance of the order dated 18.11.2022 passed by this Court. Accordingly, the present petition is accepted and the impugned order dated 16.12.2022 is set aside.

Learned trial Court is directed to afford an opportunity to the respondents to further cross-examine the petitioner, if they so desire.

The petition is being disposed of without issuance of the notice to the respondents as in view of the nature of the order, which is not prejudicial to the respondents in any manner, is being passed.

17.02.2023 **(VIVEK PURI)**
smriti **JUDGE**

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No