

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

122

CR No.53 of 2023

Date of Decision : 09.01.2023

M/s Zenith Cycle Company

....Petitioner

VERSUS

M/s Cosco India Ltd.

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Shobit Phutela, Advocate for the petitioner.

ALKA SARIN, J. (Oral)

The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 08.12.2022 (Annexure P-1) whereby the application filed by the defendant-petitioner under Order XVIII Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 for recalling PW-1, Sh. Rakesh Khurana, has been dismissed.

The brief facts relevant to the present *lis* are that a suit for recovery of Rs.10,38,400/- along with interest was filed by the plaintiff-respondent on 27.02.2015. The defence of the defendant-petitioner herein was struck off vide order dated 10.01.2017. The application for recalling the order dated 10.01.2017 was also dismissed vide order dated 30.01.2017. A Civil revision was filed in this Court being CR-2729-2017 by the defendant-petitioner challenging the order dated 30.01.2017. Vide order dated 07.02.2019 the said revision petition was permitted to be withdrawn with liberty to incorporate a challenge to order dated 10.01.2017. In the meanwhile, the plaintiff-respondent led it's evidence. The cross-examination of PW1, Rakesh Khurana, was partly done on 05.12.2018 and was further deferred on the request of counsel appearing on behalf of the defendant-petitioner on the ground that he intended to put certain documents to the

witness during his cross-examination. In the order dated 05.12.2018 it was noticed that the witness PW1 was partly examined on 17.05.2018 and despite five effective opportunities having been availed to conclude the cross-examination, the cross-examination had not been concluded. However, in the interest of justice, final opportunity was granted to the defendant-petitioner to cross-examine the witness on 20.12.2018 subject to Rs.1000/- as costs. It was also noticed in the order that in case of failure to conclude the cross-examination of the witness, no further opportunity would be given to the defendant-petitioner to conclude his cross-examination. Vide order dated 20.12.2018 opportunity to further cross-examine the plaintiff-respondent's witness PW-1, Rakesh Khurana, was treated as nil on the ground that the defendant-petitioner failed to further cross-examine the said witness. On 21.01.2019 an application was filed by the defendant-petitioner under Order XVIII Rule 17 CPC for recalling PW-1, Rakesh Khurana. It is apt to note that in para 9 of the application it was stated that the Court may be pleased to recall its order dated 20.12.2018 and further allow cross-examination of witness PW1. The said application has been dismissed vide the impugned order dated 08.12.2022. Hence, the present revision petition.

Learned counsel for the defendant-petitioner would contend that the witness PW1, Rakesh Khurana, could not be cross-examined completely as the documents, which were to be put to the witness PW1, were in the custody of the representative of the defendant-petitioner who was traveling at that point of time and hence the application for recalling the witness PW-1, Rakesh Khurana, ought to have been allowed.

Heard.

In the present case, the order dated 20.12.2018 has not been challenged in the present revision petition whereby the opportunity granted for further cross-examination of PW-1 Rakesh Khurana was treated as nil. When confronted with the same, learned counsel for the defendant-petitioner would contend that since a prayer was made in the application dated 21.01.2019 for recalling of the witness and that the order dated 20.12.2018 be also recalled, hence there was no requirement for separately challenging the order dated 20.12.2018. Without having challenged the order dated 20.12.2018 the present revision petition itself would not be maintainable. The opportunity to further cross-examine PW-1, Rakesh Khurana, was closed vide order dated 20.12.2018 which remains un-challenged till date. Merely because an application was filed for recalling of the witness, wherein a prayer was made in passing that the order dated 20.12.2018 be recalled, cannot be treated as a challenge to the said order. Further, the conduct of the defendant-petitioner in the present case also needs to be noticed. Earlier the defence of the defendant-petitioner was struck-off vide order dated 10.01.2017. Thereafter, an application was filed by the defendant-petitioner for recalling the said order dated 10.01.2017 which was also dismissed vide order dated 30.01.2017. The petitioner filed CR-2729-2017 which was dismissed as withdrawn vide order dated 07.02.2019 with liberty to challenge the order dated 10.01.2017, which had not been challenged in the said revision petition. Thereafter, CR-1237-2019 was filed which was ultimately allowed vide order dated 09.08.2022 and the written statement of the defendant-petitioner was treated as taken on record. The defendant-

petitioner in the present case has been treating the entire proceedings in a very casual manner and has been adopting tactics to delay the litigation on one pretext or the other. Even in the present case, as in the earlier case, the main order treating the opportunity of further cross-examination as nil has not been challenged. The same mistake was committed earlier also while filing CR-2729-2017.

Keeping in view the totality of the circumstances, I do not find any merits in the present revision petition which is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

09.01.2023
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO