

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(247)

CR No. 959 of 2019 (O&M)
Date of Decision : 15.02.2023

Som Nath

...Petitioner

Versus

Des Raj

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Eliza Gupta, Advocate for the petitioner.

Harsimran Singh Sethi J. (Oral)

CM-15013-CII-2019

Present application has been filed for placing on record zimni orders as Annexure P-7 (Colly).

Application is allowed and zimni orders as Annexure P-7 (Colly) are taken on record.

CR-959-2019

In the present civil revision petition, the prayer of the petitioner is that PW1, namely, Des Raj be summoned again for cross-examination as vide order dated 05.05.2017 (Annexure P-4), it has been recorded by the court that there is cross-examination of PW Des Raj as 'NIL' as despite last opportunity the said witness was not cross-examined and the application for recalling the said witness has also been dismissed by the impugned order dated 03.07.2018 (Annexure P-6).

Learned counsel for the petitioner submits that a complaint was filed by the petitioner against Des Raj under Section 138 of Negotiable

Instruments Act, which complaint was dismissed on 22.01.2015 after which date, Des Raj filed a suit for recovery for damage caused to the reputation, harassment along with interest. In the said suit, Des Raj was examined-in-chief but despite due opportunities given to the petitioner-defendant, Des Raj was not cross-examined and once, even after the last opportunity granted to the petitioner-defendant, PW1 Des Raj was not cross-examined, the impugned order dated 05.05.2017 was passed recording that cross-examination of PW1 Des Raj as 'NIL'.

After a period of five months of passing the order dated 05.05.2017, the application was filed by the petitioner-defendant for recalling PW Des Raj for cross-examination, which application was dismissed by the trial court on 03.07.2018, which order has been impugned in the present civil revision petition.

I have heard learned counsel for the petitioner and have gone through the record with her able assistance.

Learned counsel for the petitioner-defendant submits that non-cross-examination of PW Des Raj was totally unintentional and the said act is only attributed to the counsel, who was representing the petitioner-defendant hence, the prosecution witness Des Raj needs to be recalled for cross-examination so that there is proper adjudication of the claim raised in the suit concerned. Learned counsel submits that for the act of the counsel, petitioner should not be made to suffer.

Keeping in view the facts, which have been mentioned in the impugned orders, it is clear that due opportunities were given to the petitioner-defendant to cross-examine the witness, who remained present on all the occasions. Last opportunity was also granted to the petitioner-

defendant to cross-examine PW Des Raj but despite those valuable opportunities, same were not availed hence, the trial Court had been left with no option but to treat the cross-examination of Des Raj as 'NIL'. The courts cannot wait till a party to the suit acts. Once, despite due opportunities, the petitioner-defendant failed to cross-examine PW1 Des Raj, the order dated 05.05.2017 cannot be treated as arbitrary or illegal.

Learned counsel for the petitioner-defendant further submits that though, vide order dated 05.05.2017, it was recorded by the court that the cross-examination of PW1 Des Raj is 'NIL' but once subsequently an application was made for setting-aside the said order, another opportunity should have been granted. The order passed by the court on the said application dated 03.07.2018 is also perfectly valid and legal. Once, due opportunities were given to the petitioner-defendant to cross-examine PW Des Raj and those opportunities were not availed, there was no ground with the petitioner-defendant to file an application subsequent to avail the said remedy, which was closed by order of the Court and that too without asserting a valid ground.

No infirmity in the order dated 05.05.2017 has been pointed by the learned counsel for the petitioner-defendant and in the absence of any perversity or illegality, the said order cannot be set-aside.

Dismissed.

February 15, 2023
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No