IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

203

CRM-M-44083-2015
Decided on : 14.02.2023

R. S. Textiles Etc.

. . . Petitioner

Versus

UCO Bank

. . . Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

PRESENT: Mr. Satinder Khanna, Advocate for the petitioner.

Mr. Ashok Bhardwaj, Advocate for the respondent.

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AMAN CHAUDHARY, J.

Present petition has been filed for setting aside order dated 25.08.2015, passed by learned Judicial Magistrate, 1st Class, Ludhiana vide which the application filed by the accused-petitioner for cross-examination of the complainant was dismissed.

Learned counsel contends that the petitioner had applied and was sanctioned cash credit limit of Rs.15 lakh by the respondent-Bank but the said account became irregular. The total amount due as on 08.01.2010, Annexure P-1, which is an account statement of UCO Bank was Rs.177.50 which was paid by the petitioner vide receipt dated 06.04.2010, Annexure P-2. Consequently, the statement was made by the respondent-Bank in an application filed by it before the Debt Recovery Tribunal (DRT) stating therein that at the present moment, the Bank has dropped all proceedings in pursuance to the notice issued by it under Section 13(2) of the SARFAESI Act. In view of the said statement, the application was allowed to be dismissed as withdrawn with liberty to the respondent-Bank to serve notice under the aforesaid section, if required vide order dated 08.04.2010, Annexure P-3. Thereafter, in the complaint filed by the Bank under Section 138 of the Negotiable Instruments Act, the petitioner filed an application under Section 145 (2) of the Negotiable Instruments Act for permission to cross-examine the complainant in view of the fact that accused-petitioner had paid the entire amount before 08.04.2010, consequently the complainant-Bank had withdrawn the notice under Section 13((2) of the SARFAESI Act. As such, there was no occasion for presentation of encashment of cheque in question, for such reasons, it was considered essential that before the accused-petitioner is called upon to lead his defence evidence for cross examining the complainant, the said application came to be dismissed on account of it having been filed at the fag end of the case. He further contends that it is essential for the just decision of the case that he is permitted to cross examine the complainant for which he seeks only one effective opportunity which may even be subject to cost.

Learned counsel for the respondent-Bank raises no serious objection to the same, however, the same may be allowed subject to costs.

Heard.

It is apposite to make a reference to the judgment of Hon'ble The Supreme Court of India in the case of **Indian Bank Association and others vs. Union of India and others,** 2014(2) RCR (Crl.) 598, wherein it was held that, "Considerable time is usually spent for recording the statement of the complainant. The question is whether the Court can dispense with the appearance of the complainant, instead, to take steps to accept the affidavit of the complainant and treat the same as examination-in-chief. Section 145(1) gives complete freedom to the complainant either to give his evidence by way of affidavit or by way of oral evidence. The Court has to accept the same even if it is given by way of an affidavit. Second part of Section 145(1) provides that the complainant's statement on affidavit may, subject to all just exceptions, be read in evidence in any inquiry, trial or other proceedings. Section 145 is a rule of procedure which lays down the manner in which the evidence of the complainant may be recorded and once the Court issues summons and the presence of the accused is secured, an option be given to the accused whether, at that stage, he would be willing to pay the amount due along with reasonable interest and if the accused is not willing to pay, Court may fix up the case at an early date and ensure day-to-day trial." It was further observed that after the accused appears, the Court should ask him to take notice under Section 251 Cr.P.C. to enable him to enter his plea of defence and fix the case for defence evidence, unless an application is made by the accused under Section 145(2) for re- calling a witness for cross-examination.

This Court in the case of **Kesar Singh vs. Jagdish Chander**, 2018(4) RCR (Crl.) 981, wherein the complainant had already been cross-examined and the arguments raised that no opportunity to re-examine him can be granted, was found to be totally unsustainable, as it was held that the accused has every right to further cross examine atleast the complainant to confront him qua the facts involved in the complaint with reference to the additional testimony and that the trial Court could not have declined the prayer, it being his legal right.

It is trite that the court is not a hapless bystander and has a vital role to discharge in ensuring that the cause of discovering truth as an aid in the realization of justice is manifest. It must ensure that full and material facts are brought on record so that there might not be miscarriage of justice. Even if the evidence on both sides is closed and the jurisdiction of the court must obviously be dictated by exigency of the situation, and fair-play and good sense appear to be the only safe guards and that only the requirements of justice command. The only consideration which should weigh with the Court is to see that justice is done.

In the present case, the respondent bank had made a statement in an application filed by it before the Debt Recovery Tribunal that it had dropped all proceedings against the petitioner pursuant to notice issued by it under the SARFAESI Act, upon which the application was dismissed as withdrawn. The application was filed by the petitioner seeking permission to cross-examine the complainant-Bank in view of the aforesaid fact and that he had paid the entire amount before 08.04.2010, as such, to be able to substantiate his defence.

Considering the facts and circumstances of the case in light of the judgments referred to hereinabove, this Court deems it appropriate to direct the trial Court to grant one opportunity to the petitioner to cross-examine the complainant- respondent. Accordingly, the present petition is allowed. The same shall however, be subject to costs of Rs.10,000/- to be paid to the complainant-bank.

(AMAN CHAUDHARY)
JUDGE

14.02.2023
Mehak

Whether reasoned/speaking? Yes/No

Whether reportable? Yes/No