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

**CR-3393-2023 (O&M)
Date of Decision: 31.05.2023**

M/s Deepak Engineers

....Petitioner

Versus

M/s P.P. Rolling Mills MFG. Co. Pvt. Ltd. and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Rohit Rana, Advocate
for the petitioner.

ARUN MONGA, J. (ORAL)

Petition herein is to set aside the impugned order dated 10.03.2023 (Annexure P-7), whereby plaintiff was restrained from examining any new witness and order dated 19.05.2023 (Annexure P-8) passed by learned Civil Judge (Junior Division), Faridabad, whereby the evidence of petitioner/plaintiff, was closed by Court order.

2. Succinct facts first, as pleaded in the instant petition.

2.1. Petitioner/plaintiff filed a civil suit for recovery of Rs.1,34,815/-. In the plaint, it was stated that plaintiff is engaged in the business of manufacturing of all kinds of fabrication, tool room, engineering works as well as job works etc. It was stated that during course of business, defendant/respondents had placed purchase orders and sent material challans and GST challans from time to time. After settling the rates, plaintiff carried out the job work and issued bills in the name of defendant No.1/respondent No.1. As per the terms of the purchase orders, the payments were to be

made with a period of 60 days from the date of bills but no amount was paid. As such, claim for an amount of Rs.1,34,815/- was raised by way of the suit for recovery.

2.2. After being served, respondent/defendant filed a written statement pleading that there is no cause of action, no locus standi etc. On merits the claim of plaintiff was denied by defendant/respondents and it was stated that rather some amount is to be recovered from plaintiff by defendant/respondents.

2.3. Issues in the above-mentioned case was framed on 01.12.2021 and case was fixed for plaintiff's evidence for 14.01.2022. Thereafter, on 14.01.2022, due to COVID pandemic the matter could not be taken up and was adjourned to 22.04.2022.

2.4. Subsequently, the case was taken up on 22.04.2022 & thereafter on 12.09.2022. Since no PW was present, as such the case was adjourned to 10.01.2023, on which date one PW i.e., the Clerk/Record Keeper of Excise and Taxation Office, Faridabad (West) came present but did not bring the summoned record due to which he could not be examined and case was adjourned to 10.03.2023. Thereafter, on 10.03.2023, again for want of complete record owing to some technical problem in the portal of GST Department, case was adjourned to 19.05.2023.

2.5. On 19.05.2023, PW-Clerk of Excise and Taxation Office, Faridabad was though examined but plaintiff was not allowed to examine any other witness and evidence of the plaintiff was closed and case has now been adjourned to 02.08.2023.

3. Learned counsel for petitioner would argue that witness, being sought to be examined by plaintiff, is a material one who is well aware about the transactions between the parties. Moreover, due to error on the part of counsel, the name of witness, who is now being sought to be examined, could not be submitted. Further plaintiff/petitioner only wants to examine one witness i.e. Deepak Saini, GPA of plaintiff and does not want to examine any other witness. Learned counsel for petitioner further submits that petitioner undertakes to examine himself if granted one effective opportunity.

4. Given the nature of order being passed, there is no necessity to issue notice to the respondents, as no serious prejudice would be caused to them. Notice to respondents herein is thus dispensed with.

5. I have heard learned counsel for petitioner and gone through the case file.

6. Impugned orders indicate that the only reason for not permitting the petitioner to examine his power of attorney Deepak Saini is omission of his name in the record (perhaps the list of witnesses), though the suit itself had been filed through the said power of attorney. The omission of his name in the list of witnesses prepared by the petitioner's counsel seems just accidental. In the absence of the plaintiff, his power of attorney is the most important witness to prove his case. He/petitioner should not suffer because of an accidental omission of his name in the list of witnesses prepared by his counsel.

6.1. Trite law it is that procedure is a handmaid of justice and, ought not to be given precedence at the cost of subjugation of substantive justice.

The valuable right of litigants to establish their cases by leading evidence ought not to be taken away by the Court except in a case of their deliberate omission/failure to adduce the same earlier. Prejudice would indeed be caused to petitioner herein, unless afforded an opportunity to lead evidence which in fact seems necessary for a just decision of the case. Trial in the matter may lead to unjust consequences in the absence of an opportunity to petitioner-plaintiff to adduce/conclude evidence.

7. In the peculiar circumstances of the case, as is borne out from the proceedings of Ld. Trial Court, the instant petition is allowed subject to payment of costs of Rs.5,000/- with the condition that plaintiff shall not be given more than one effective opportunity to examine a new witness, subject of course to the discretion of Ld. Trial Court to give further adjournment for the purpose depending upon exigencies of work.

8. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

May 31, 2023
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No