

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

Sr. No.135+204

**CR-3172-2021 (O&M)
Date of Decision: 28.03.2023**

M/S BALA JI TRADING COMPANY

....Petitioner

Versus

CHAND SINGH

..... Respondent

CORAM: HON'BLE MRS JUSTICE ARCHANA PURI

Present:- Mr. Rajesh Sethi, Mr. Arun Biriwal and
Mr. Paramdeep Singh, Advocates,
for the petitioner.

None for the respondent.

ARCHANA PURI, J. (ORAL)

CM-5566-CII-2023

Present application has been filed for placing on record the documents, Annexures P-9 and P-10.

Keeping in view the averments made in the application, same is allowed and requisite documents are taken on record.

Main case

Challenge in the present revision petition is to the order dated 03.12.2021 (Annexure P-8), vide which, an application filed by the petitioner/plaintiff for further cross-examination of DW-1, Chand Singh, *vis-a-vis* Ex.D-10 to Ex.D-88 tendered in additional evidence, has been dismissed.

Material facts, as culled out from the paperbook are that, initially the petitioner-M/s Bala Ji Trading Company, had filed a suit against Chand Singh (respondent herein) for recovery of Rs.18,29,180/- together with the interest. However, when the case was at the stage of rebuttal evidence and

arguments, an application for summoning of the account books *vis* ledger and Rokar Bahi for the year 2014-15 and 2015-16 of the petitioner/plaintiff-firm, pertaining to the accounts of Chand Singh, respondent/defendant, was filed, copy whereof is Annexure P-4. Copy of the reply to the said application is Annexure P-5. Further, the said application was allowed vide order dated 25.02.2019, copy whereof has been placed on record today itself, vide CM-5566-CII-2023 as Annexure P-9. Thereupon, various documents which were tendered into evidence, have been compiled and the same have been brought on record as Annexure P-10.

Thereupon, an application under Order 18 Rule 17 read with Section 151 CPC, for recalling of the witness, DW-1, Chand Singh, was filed by the petitioner/plaintiff, for conducting further cross-examination, copy whereof is Annexure P-6. Reply to the said application is Annexure P-7. Thereafter, vide the impugned order dated 03.12.2021 (Annexure P-8), the said application was dismissed.

Service of the respondent has been duly effected, but however, none has made appearance on his behalf.

Heard learned counsel for the petitioner.

Perusal of the impugned order reveals that an application for conducting further cross-examination of DW-1 was dismissed, while making observation by learned Lower Court, which is reproduced in verbatim, as hereingiven:-

“ I have carefully perused the judgments relied upon by the ld. Counsel for the plaintiff and there no dispute in the proposition that whenever an application for additional evidence is allowed, the opponent side should be given an opportunity for rebuttal evidence. However, opportunity for rebuttal evidence must be availed within reasonable time

frame and party desirous of producing rebuttal evidence must show his bonafide. In the present case, considering the number of opportunities already availed by the plaintiff side for rebuttal evidence as stated above, this application cannot be allowed at this stage. It is clearly misuse of the process of law. The documents tendered in evidence by the defendant as Ex.D-10 to Ex.D-88 are attested copy of the record of the plaintiff's firm which are produced on record by the plaintiff side itself on the insistence of defendant. Thus, considering the dilatory tactics adopted by the plaintiff and in view of detail reasons cited in this order in view of the judgments of Salem Advocate Bar Association case (supra), M/s Shiv Cotex case (supra) and Bharat Rajput case (supra), no ground is made out to allow this application.

9. *In view of the aforesaid discussion and reasons, the application in hand is **dismissed**. This court is also of the view that the plaintiff has filed the present application as dilatory tactics. **Hence, cost of Rs.1,000/- is hereby imposed upon the plaintiff under Order 35-B CPC which he required to pay to the defendant and payment of aforesaid cost shall be the condition precedent for further participation of the plaintiff in this suit.***

Perusal of the observation, so made, reveals that the application had been dismissed on the ground that an opportunity of rebuttal evidence, ought to have been raised within reasonable timeframe, but however, despite availing several opportunities, no rebuttal evidence was lead and at that stage, application had been filed for cross-examination of DW-1, Chand Singh. However, the aforesaid observation is palpably wrong.

The case was at the stage of rebuttal evidence, when the application for leading additional evidence was filed on 16.08.2018 and on that very day, reply was filed. However, for a long period, the application remained pending before learned Lower Court and the same was allowed

vide order dated 25.02.2019. Thereupon, the respondent/defendant lead the additional evidence in the shape of documents, which are Ex.D-10 to Ex.D-88. It is submitted by learned counsel for the petitioner at Bar that the said documents were tendered into evidence on 05.03.2019. The synopsis of the date had also been supplied by learned counsel for the petitioner in the Court today and the same is taken on record.

Thereafter, the case was adjourned for rebuttal evidence and arguments on several dates and on 01.12.2021 an application under Order 18 Rule 17 read with Section 151 CPC, for recalling the defendant, DW-1, Chand Singh, for further cross-examination, *vis-a-vis* the documents lead in additional evidence, was filed. Reply to the said application was filed on 02.12.2021 and then the application was dismissed on 03.12.2021.

Further, it is submitted that even though, the additional evidence was lead on 05.03.2019, but however, due to onset of Covid-19, the application for recalling was filed on 01.12.2021.

Anyhow, even though, there is delay in filing the application, but this *ipso facto* does not raise a ground for denial of the opportunity to the petitioner/plaintiff to rebut the documents, which have been brought in additional evidence by the respondent/defendant, which was allowed by learned Lower Court, at the stage of rebuttal evidence. The concerned Court also has to take into consideration the constrained circumstances, under which the Courts were functioning during the onset of Covid-19.

Considering the same and also considering the very fact that opportunity should be given to the petitioner/plaintiff to rebut the documents Ex.D-10 to Ex.D-88, the said application ought to have been

allowed, to conduct further cross-examination of Chand Singh, qua the documents lead in additional evidence. The date fixed before learned Lower Court is stated to be 13.04.2023.

In view of the aforesaid fact situation, the instant revision petition is hereby allowed and learned Lower Court shall recall the witness, DW-1, Chand Singh, for the purposes of further cross-examination by the petitioner/plaintiff qua the documents lead in additional evidence, which are Ex.D-10 to Ex.D-88. However, it is made clear that only one opportunity shall be given to the petitioner/plaintiff to conduct cross-examination, as and when the said witness appears before the concerned Court. If, under any constrained circumstances, the Court is unable to examine DW-1, Chand Singh, then an endeavour shall be made to cross-examine him within a period of 10 days from the date of appearance of the said witness.

Accordingly, the instant revision petition stands disposed of.

28.03.2023
Himanshu

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned	:	Yes
Whether reportable	:	No