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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-6994-2019 (O&M)
Date of decision : 15.05.2023

Raj Kumar Singla ... Petitioner(s)

Versus

M/S Arora Manufacturing Co. & Ors. ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Kiran Kumar Madan, Advocate for the petitioner.

Mr. Navraj Singh Mahal, Advocate for respondent No.1.

ALKA SARIN, J. (ORAL)

1. The present revision petition has been filed challenging the order dated 21.05.2019 (Annexure P-4) whereby the opportunity to the plaintiff-petitioner herein to present himself for cross-examination has been denied and the evidence of the plaintiff-petitioner has been closed by order.
2. The brief facts relevant to the present *lis* are that the plaintiff-petitioner filed a suit seeking following reliefs :

“Suit for Declaration to the effect that defendants No.1 to 5 are liable to make payment regarding the individual as well as business liabilities of Sh. Surinder Arora, previous proprietor of M/s Arora Manufacturing

Company personally as well as out of the funds resources, cash, FDRs, moveable and immoveable properties inherited by them from Sh. Surinder Arora, previous Proprietor M/s Arora Manufacturing Company, G.T. Road, Bye Pass Jalandhar, 2nd Address: Unit C-41, Focal Point, Jalandhar

AND

Suit for Recovery of Rs.14,75,950/- on account of unpaid amount of outstanding liability of business transactions between the plaintiff and Sh. Surinder Arora, previous proprietor of M/s Arora Manufacturing Company, G.T. Road, Bye Pass, Jalandhar, 2nd Address: Unit C-41, Focal Point, Jalandhar with regard to supplied goods by the plaintiff for which the defendant No.1 to 5 are liable and for interest pendente lite and future interest.

3. On 13.05.2019, the following order was passed by the Trial Court :

“PW-9 Raj Kumar is present and tendered his examination in chief by way of affidavit. His cross examination is deferred on the request of the Ld. Counsel for the respondent. Copy supplied. PW-9 is bound down for 21.05.2019 for his cross examination. No other PW is present. Let remaining unexamined PWs be also summoned for the date fixed.

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4. Thereafter on 21.05.2019 i.e. the next date, the following order was passed by the Trial Court :

“Despite last opportunity to the plaintiff no PW has been produced today. Even the Pws who was examined in chief earlier have not come present today for cross-examination. Accordingly finding no other way out, evidence of plaintiff is closed by order of this Court. Let Dws be produced on 01.07.2019. List PF/DM etc be furnished within five days tentatively. Defendants shall produced the witnesses at his own responsibility.”

5. Though in the order dated 13.05.2019 it has not been noticed that it is the last opportunity, however, on 21.05.2019 the Court noticing that despite last opportunity no PW has been produced, closed the evidence of the plaintiff-petitioner by order.

6. Learned counsel for the plaintiff-petitioner would contend that a wrong observation has been made by the Court in the order dated 21.05.2019 as there was no such observation regarding last opportunity in the order dated 13.05.2019. Learned counsel would further contend that the plaintiff-petitioner only wants to present himself for cross-examination and does not want to lead any further evidence.

7. *Per contra*, learned counsel for defendant-respondent No.1 has vehemently contended that since the plaintiff-petitioner did not present himself earlier, the impugned order has rightly been passed closing the evidence of the plaintiff-petitioner.

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8. Heard.

9. In the present case vide order dated 13.05.2019 the case was adjourned for examination of the remaining PWs. The order does not refer to any last opportunity which was granted to the plaintiff-petitioner. However, in the impugned order dated 21.05.2019 the evidence of the plaintiff-petitioner has been closed by order on the ground that despite last opportunity, no PW was present. The said order is not sustainable in law and contrary to the record. Learned counsel for the plaintiff-petitioner has already made a statement that he does not wish to lead further evidence except presenting himself for cross-examination.

10. In view of the above and in order to do complete justice between the parties, the impugned order dated 21.05.2019 is set aside. The plaintiff-petitioner is granted one effective opportunity to present himself for cross-examination before the Court concerned. Since there is a delay on the part of the plaintiff-petitioner in leading his evidence, the present revision petition is allowed subject to payment of Rs.5,000/- as costs to be paid to respondent No.1. Pending applications, if any, also stand disposed off.

15.05.2023
Yogesh Sharma

(ALKA SARIN)
JUDGE

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