

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

119

CR-7201-2023 (O&M).

Date of Decision: 07.12.2023.

Manjit Singh

....Petitioner.

Versus

Sanjeev Gupta and another

....Respondents.

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Naresh Jain, Advocate for petitioner.

Mr. Shubhashish Kukreti, Advocate for respondent No.1.

Lalit Batra, J.(Oral)

CM-22308-CII-2023

Documents i.e. statement of Sanjeev Gupta (PW-1) as well as miscellaneous orders passed by learned Trial Court are taken on record as Annexures P-7 and P-8, subject to all just exceptions.

Application stands allowed.

Main Case

This civil revision petition under Article 227 of the Constitution of India has been filed by petitioner/defendant impugning the legality of order dated 15.11.2023 (Annexure P-6), rendered by learned Additional Civil Judge (Senior Division), Patiala, in Civil Suit CIS No.CS/977/2020 titled 'Sanjeev Gupta and another vs. Manjit Singh', vide which application dated 13.09.2023 (Annexure P-4) filed by petitioner/defendant for recalling respondent/plaintiff

No.1-Sanjeev Gupta (PW-1) for further cross-examination, has been dismissed.

2. Learned counsel for petitioner/defendant *inter alia* contends that respondents/plaintiffs filed civil suit for recovery of Rs.25 Lakhs (Rupees Twenty Five Lakhs only) alongwith interest against petitioner/defendant, wherein upon notice, petitioner/defendant appeared and filed written statement, to which respondents/plaintiffs filed replication. After framing of issues, respondents/plaintiffs led their evidence and after closure of their evidence, when the case was at the stage of recording evidence of petitioner/defendant, he (petitioner/defendant) was able to obtain record of Complaint dated 04.03.2020 moved by respondents/plaintiffs to police authorities with regard to dispute involved in the instant suit, therefore, petitioner/defendant filed an application for recalling of PW-1 Sanjeev Gupta for further cross-examination alongwith record. However, learned Trial Court acted on surmises and conjectures and wrongly dismissed the said application.

3. I have heard learned counsel for petitioner/defendant and have also gone through the contents of petition especially the documents placed on the record.

4. Notice of instant petition is not required to be given to respondents/plaintiffs as entire documents i.e. copies of miscellaneous orders passed by learned Trial Court are already on record. In order to avoid further delay in the litigation and unnecessary litigation expenditure, the service of notice to respondents/plaintiffs is dispensed with.

At this juncture, Mr. Shubhashish Kukreti, Advocate has appeared in Court and filed his memo of appearance on behalf of respondent No.1, which is taken on record.

5. Hon'ble Supreme Court in Ram Rati vs. Mange Ram (D) Thr Lrs. & Ors., 2016(2) R.C.R. (Civil) 464, while dealing with provisions of Order XVIII Rule 17 CPC has held as under:-

“11. The respondent filed the application under Rule 17 read with Section 151 of the CPC invoking the inherent powers of the court to make orders for the ends of justice or to prevent abuse of the process of the court. The basic purpose of Rule 17 is to enable the court to clarify any position or doubt, and the court may, either suo motu or on the request of any party, recall any witness at any stage in that regard. This power can be exercised at any stage of the suit. No doubt, once the court recalls the witness for the purpose of any such clarification, the court may permit the parties to assist the court by examining the witness for the purpose of clarification required or permitted by the court. The power under Rule 17 cannot be stretched any further. The said power cannot be invoked to fill up omission in the evidence already led by a witness. It cannot also be used for the purpose of filling up a lacuna in the evidence. ‘No prejudice is caused to either party’ is also not a permissible ground to invoke Rule 17. No doubt, it is a discretionary power of the court but to be used only sparingly, and in case, the court decides to invoke the provision, it should also see that the trial is not unnecessarily protracted on that ground.”

6. Perusal of impugned orders reveals that after framing of issues, examination-in-chief of PW-1 Sanjeev Gupta was recorded on 18.05.2022 and

his cross-examination was deferred on request of counsel for defendant for 13.07.2022. On 13.07.2022, no evidence of plaintiffs was present and the case was adjourned to 27.07.2022 on which date PW-1 Sanjeev Gupta and PW-2 Ritash Bharaj were examined. Due opportunity to cross-examine PW-1 Sanjeev Gupta was afforded to defendant and the said witness was cross-examined at length. In this case, evidence in affirmative of plaintiffs was closed on 07.09.2022 and thereafter despite availing twelve effective opportunities, defendant-Manjit Singh could examine himself as DW-1. On 13.09.2023 an application for recalling of Sanjeev Gupta (PW-1) for cross-examination alongwith record was filed by petitioner/defendant. By way of said application, petitioner/defendant wants to recall Sanjeev Gupta (PW-1) for further cross-examination along with record of Application No.1493/Peshi dated 04.03.2020. It is contended that above said application was moved by the plaintiff to Senior Superintendent of Police, Patiala and after inquiry, said application was filed by the police authorities on 04.03.2020 and this fact has not been disclosed in the Court. However, a bare perusal of Para No.19 of the plaint shows that respondent/plaintiff has mentioned that he had approached the police authorities. Further, a perusal of corresponding Para No.19 of written statement shows that petitioner/defendant has replied therein that the complaint filed by respondent/ plaintiff has been consigned to record room by the police department. Perusal of file shows that PW-1 Sanjeev Gupta has already been cross-examined at length by petitioner/defendant on 27.07.2022. At the time of filing written statement, factum of initiation of complaint in question by respondent/plaintiff and its filing to the records by the police

authorities was very much in the knowledge of petitioner/defendant but he chose not to cross-examine Sanjeev Gupta (PW-1) in that respect. The case is pending for evidence of petitioner/ defendant since 12.10.2022. It is pertinent to mention here that after examination of petitioner/defendant-Manjit Singh (DW-1), part examination of Jagmail Singh (DW-2) and availing twelve (12) effective opportunities, instant application for recall of Sanjeev Gupta (PW-1) and his further cross-examination was moved, these facts lead to clear inference that petitioner/defendant has moved this application just to fill up the lacuna in his evidence.

7. Thus, finding absolutely no justification for granting any further opportunity to petitioner/defendant for above said purpose and there being no irregularity or illegality in the impugned order calling for any interference by this Court, the instant petition is dismissed.

8. Pending application, if any, also stands disposed of.

(LALIT BATRA)
JUDGE

07.12.2023

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No