

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.137

CR-1326-2024
Date of Decision: 15.03.2024

HARISH GULATI

....Petitioner

Versus

THE HARYANA STATE COOPERATIVE APEX BANK LTD & ORS

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Mr. Gauravdeep Goyal, Advocate,
for the petitioner.

ARCHANA PURI, J. (Oral)

Challenge in the present revision petition is to the order dated 31.01.2024, passed by the trial Court, whereby the evidence of the petitioner (who was defendant before the trial Court) was closed by order.

Learned counsel for the petitioner heard.

As evident from the paper-book, during the pendency of application under Order 9 Rule 13 CPC to set aside the judgement and decree dated 29.09.2018, when the case was fixed for evidence of the present petitioner (who was applicant before the trial Court), the evidence was closed vide impugned order.

Learned counsel for the petitioner submits that issues were framed in the application for setting aside of the *ex-parte* judgement on 06.05.2022 and thereafter, case was fixed for evidence though, one complete witness and examination-in-chief of another witness i.e. petitioner has been

recorded before the trial Court, but however the other witnesses were not

recorded.

On query by the Court, it was disclosed that the application for summoning of the witnesses was filed before the trial Court, copy whereof has been produced by the counsel and the same is taken on record. On further query, it was disclosed that the official of SSP Office Chandigarh, as mentioned in paragraph 2 (II) of the application has already been examined. However, with regard to the witness, mentioned at serial No. (I) in paragraph No.2, was yet not examined. It is pointed out that on 28.02.2023, Aw Arvind JEE SDE Sector 14 was present but however, he had not brought the record and thereafter, he was bound down by the Court for the next date. Furthermore, it is evident that on 26.05.2023, AW Kamaljeet Superintendent in the office of SDE MCPH, was present, but however, since the counsel for the petitioner/defendant No.1 had withdrawn the Power of Attorney, the other witness was bound down for the next date i.e. 01.08.2023, and thereafter, further the witness had not made appearance.

Perusal of the zimini orders passed by the trial Court reveals that no steps had been initiated by the Court, to secure the presence of the witnesses who had earlier made appearance and who were summoned witnesses. It is the duty of the Court to ensure about the service of witnesses and to secure the presence of the summoned witnesses and further to ensure their examination. However, no such steps had been taken by the Court below.

From the zimini orders, it is also not evident, as to whether any application for summoning of witnesses, had been filed by the petitioner or not. This is so evident only, from the application produced in the Court today, which contains the recital of the deposit of the diet money also, as

ordered by the Court.

Keeping in view the aforesaid seriatim of facts, the impugned order warrants interference, in exercise of revisional jurisdiction. Hence, the impugned order is set aside and the petitioner is directed to make appearance before the trial Court on 28.03.2024, the date which is already fixed before the trial Court and on appearance of the petitioner-defendant No.1, the trial Court shall grant one opportunity for the cross-examination of petitioner-Harish Gulati, whose cross-examination is yet to be recorded and further, also make an endeavour to summon the witness cited at paragraph 2(I) of the application for summoning of witness and ensure the production of the record (if so available) and examine the said witness, at the earliest possible.

In view of the aforesaid terms, revision petition stands allowed.

15.03.2024

mahima

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No