

2024:PHHC:116591



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CR-4654-2024 (O&M)
Date of decision: 05.09.2024

M/s Advanced India Projects Ltd. Company

...Petitioner

Versus

Gursewak Singh and others

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Sandeep Verma, Advocate for the petitioner.

VIKAS SURI, J.

1. This revision petition under Article 227 of the Constitution of India has been filed by the defendant-petitioner for setting aside order dated 09.07.2024, whereby the application seeking permission to examine Shivam Sharma, Assistant Manager/authorized signatory of AIPL as defendant's witness has been dismissed and their right to lead evidence was curtailed to one last opportunity to record the testimony of any Director of the company as their witness.
2. The facts in brief sans unnecessary details are that plaintiff-respondent Nos.1 to 3 filed a suit for joint possession of land measuring 1K-7M situated in village Jheete Kalan, Tehsil and District Amritsar. On completion of the pleadings, issues were framed and the plaintiffs led their evidence.
3. Thereafter, defendant-petitioner had examined DW-3 Col.



K.S. Sandhu, its authorized signatory and when his cross-examination was in progress, he left the employment of the applicant company. Later on, defendant examined DW-4 Varun Ghai. Similarly, after recording his examination-in-chief, he also left the company. Thereafter, petitioner moved application seeking permission to examine Shivam Sharma, Assistant Manager/ authorized signatory of defendant No.1 company, as defendant's witness. The said application was dismissed vide order dated 09.07.2024.

4. Aggrieved by the said order, the petitioner has invoked jurisdiction of this Court by way of the present petition.

5. Learned counsel for the petitioner has argued that the impugned order is illegal inasmuch as it has curtailed the right of the defendant-petitioner to lead evidence. It was not open to the trial Court to examine the evidenciary value of the evidence sought to be brought on record at the initial stage, which ought to be a relevant consideration at the time of final hearing of the case. Accordingly, learned counsel for the petitioner prays for only one opportunity to conclude its entire evidence on the date already fixed before the trial Court, which is stated to be 10.09.2024. He undertakes to abide by the aforesaid.

6. Heard learned counsel for the petitioner and with his able assistance, perused the record.

7. A perusal of the impugned order would show that the trial Court has noticed the conduct of the defendant-petitioner, which would show that the examination-in-chief of DW-3 Col. Kuldeep Singh Sandhu



and DW-4 Varun Ghai, both authorized signatory of the defendant company at the relevant time, did not come present for their cross-examination and as such, their testimony cannot be read into evidence. The explanation offered is that the said persons had left employment of the company and as such, their presence could not be secured for cross-examination. The relevant observation made in the impugned order is extracted hereunder for reference:-

“The applicants have moved the present application seeking permission to examine Shivam Sharma Assistant Manager/authorized Signatory of AIPL housing and Urban Infrastructure as the applicants witness. The main contention of the applicants was that their earlier witness DW4 Varun Ghai had left the job with the applicants company due to which the company had authorized Shivam Sharma to appear as the applicants witness in the present case. Perusal of the file reveals that the present case was filed by the plaintiffs on 03.05.2016. After framing the issues on 22.12.2016, the case was adjourned for the evidence of plaintiffs which was concluded on 05.07.2019 and since then, the present case was fixed for evidence of the applicants/defendants. The applicants have recorded testimony of DW1 Ravinder Mohan Clerk of SDM office on 10.01.2020 and DW2 Jashandeep Singh Patwari on 17.01.2020. Thereafter, the applicants have recorded examination of DW3 Col. Kuldeep Singh Sandhu its authorized Signatory on 06.10.2021. DW3 was partly cross examined on 09.02.2023 and 01.03.2023 and when the remaining cross-examination of DW3 was in progress then the applicants tendered fresh examination in chief of DW4



Varun Ghai its authorized signatory on 20.09.2023 on the ground that DW3 Col. Kuldeep Singh Sandhu had left the job of the applicants company. The cross-examination of DW4 Varun Ghai was partly conducted on 07.02.2024 and 22.02.2024 and when the remaining cross-examination of DW4 Varun Ghai was in progress then the present application was moved by the applicants company seeking permission to tender the examination in chief of Shivam Sharma its Authorized Signatory as DW5 on the ground that DW4 Varun Ghai had left the job of the applicants company.”

8. A perusal of the record would further show that the defendants have already availed more than five years but have failed to conclude their evidence. Thus, while declining the application seeking to examine Shivam Sharma, authorized signatory of the defendant company, the trial Court recorded the following findings:-

“The facts stated above clearly shows that the applicants have already availed period of more than five years but they failed to conclude their evidence. No explanation was given by the applicants as to why the presence of DW3 Col. Kuldeep Singh Sandhu and DW4 Varun Ghai was not secured by them to get conduct their remaining cross-examination when their substantial cross-examination was already done in the present case. The applicants have also failed to explain that why they did not get record the examination in chief of any permanent office bearer like its Director when their temporary employee used to left their job midway without conducting their complete cross-examination. It is clear that the applicants are delaying the proceedings of the present case by moving such



kind of application and by not producing the witness in their evidence. No further delay on the part of applicants can be tolerated when they have failed to explain the period of five years taken by them to lead their evidence. The applicants cannot be permitted to record the testimony of their authorized signatory as DW5 when this court has already experienced the fate of similar concession granted to applicants company in case of DW3 and DW4. Accordingly, this court does not find any merit in the present application and the same is dismissed. Since, the present case is fixed for evidence of the applicants, so they are at liberty to record the testimony of any Director of the company as their witness. Keeping in view of the long time taken by the applicants in leading their evidence, the concession stated above is curtailed to only one last opportunity, failing which no further request shall be considered. It is made further clear that one last opportunity is granted to the applicants/defendants to conclude their evidence for 22.07.2024.”

9. It is not disputed that the defendants have not been able to conclude their evidence in the last more than five years. The petitioner is required to watch its own interest and to prove the case set up by it in the written statement by leading evidence. Failure to bring on record cogent evidence would be at the risk and cost of the defendant-petitioner, which need not to be gone into by the Court at the stage of recording evidence. It would be a matter of consideration at the time of final disposal of the suit.

10. The Apex Court in *The State of Punjab and another vs.*



Shamlal Murari and another, (1976) 1 SCC 719, observed that Courts are to do justice and not to wreck the end product on technicalities.

11. In the peculiar circumstances, taking entirety of the matter into consideration and to secure ends of justice, the impugned order dated 09.07.2024 inasmuch as it restricts that only a Director of the company can be examined as a witness, is set aside to that extent and one opportunity is granted to the petitioner-defendant to conclude its entire evidence at own responsibility, on the hearing already fixed before the trial Court, subject to payment of costs of Rs.50,000/- to be paid to the plaintiffs; and subject to the discretion of the trial Court to further grant opportunity, in case it so desires depending upon the exigencies of work before it. It shall be the sole responsibility of the petitioner to secure the presence of its witnesses for complete examination, failing which the evidence of the defendant would be liable to be closed by Court order. It is made clear that failing to produce the evidence or to pay costs in terms of this order, the petitioner would not be entitled to any further opportunity for the said purpose and the trial Court would proceed with the matter without this order having any bearing on the trial.

12. As the present revision petition is being disposed in the absence of plaintiff-respondents, liberty is granted to them to seek recalling of the present order, if valid grounds for the same are made out.

13. Taking note of the fact that the suit was instituted in the year 2016 and has been pending for more than five years after the



plaintiffs closed their evidence, the trial be concluded expeditiously and the suit be disposed of in a time bound manner, preferably within a period of six months from the date already before the trial Court.

14. The revision petition is disposed of in the aforesaid terms.

September 05, 2024
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(VIKAS SURI)
JUDGE

Whether speaking/reasoned :	Yes / No
Whether Reportable :	Yes / No