

HIGH COURT OF PUNJAB AND HARYANA

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Date of Decision: 01st February 2024

CR-731-2023 (O&M)

VIJAY KUMAR ...PETITIONER

VERSUS

HARMESH KUMAR AND OTHERS ...RESPONDENTS

Legislation:

Section 151 of the Code of Civil Procedure (CPC)

Subject: Revision petition challenging the order dated 29.11.2022 that closed the evidence of the petitioner, who is defendant No.1 in the lower court, due to incomplete cross-examination and other procedural delays.

Headnotes:

Revision Petition – Civil Procedure Code, 1908 – Challenge to the order closing evidence of petitioner (defendant No.1 in the court below) – Order dated 29.11.2022 set aside due to incomplete cross-examination and oversight in the summoning of records – Revision allowed with conditions. [Para 1, 3-4]

Evidence – Closing of defendant's evidence – Incomplete cross-examination of DW-1 and failure to summon necessary records – Impugned order set

aside due to these oversights – Opportunity for further cross-examination granted. [Para 3-4]

Costs Imposed – Direction to deposit Rs.20,000 as costs to the “Poor Patient Welfare Fund, PGIMER” – Costs imposed due to the conduct of the parties and the nature of the case. [Para 4]

Procedure on Remand – Directions for further proceedings – Petitioner to appear before the lower court on a specified date – Court to record further statement of DW-1 within three weeks of appearance and ensure necessary records are furnished for cross-examination. [Para 4]

Referred Cases: None.

Representing Advocates:

Mr. Navjot Singh for the petitioner.

ARCHANA PURI, J. (Oral) CM-23535-CII-2023

The present application has been filed for placing on record the Amended Memo of Parties, in compliance of order dated 12.12.2023. It is submitted by learned counsel for the petitioner that status of the parties before the Court below, being plaintiff and defendants was wrongly mentioned in the earlier memo of parties. Considering the same, the instant application is hereby allowed and Amended Memo of Parties is taken on record.

CM-20513-CII-2023

The present application has been filed for placing on record the zimini orders, in compliance of order dated 12.10.2023 as Annexure P-8. In view of the averments made in the application, same is allowed and the requisite zimini orders are taken on record.

Main case

Challenge in the present revision petition is to the order dated 29.11.2022 (Annexure P-1), whereby the evidence of the petitioner, who is defendant

No.1 before the court below, was closed by order. Learned counsel for the petitioner heard. Perusal of the zimini orders, which have been placed on record today itself, vide CM-20513-CII-2023, reveals that the case was fixed for evidence of the defendant at first instance on 06.08.2019 and thereafter, it remained pending for recording of the DWs, but it was only on 15.10.2019, part statement of DW-1, Vijay Kumar, was recorded. However, for his cross-examination, the case was adjourned further for 08.11.2019. Thereafter again, it was only on 10.12.2019, Vijay Kumar had made appearance and was partly examined and his further cross-examination was deferred for want of record and he was bound down on 14.01.2020 along with the record. On the next date, one witness had come and qua the other witness bailable warrants were issued for 24.01.2020. On 24.01.2020, three witnesses were examined. Thereafter again, no DW was present and it was only on 14.02.2020, the DW-5, Mandeep Kumar, was examined and on the request of learned counsel for the defendant, the case stood adjourned for 25.02.2020. On 25.02.2020, another witness DW-6 Lakhvir Singh was examined. Thereafter again, no witness was examined on the subsequent date. On 17.03.2020, DW-1, Vijay Kumar was present, but his crossexamination was not conducted, on account of request made by learned counsel for the plaintiff. Thereafter, for sufficiently long period, no effective proceedings were conducted before the court below, on account of Covid pandemic situation.

On 25.03.2021, no DW was present and case was adjourned further. Thereafter again, due to pandemic situation, the proceedings were not conducted, on account of restrictive working. On 07.07.2021 onwards, again the case was fixed for DWs for two dates, but no witness was examined. On 27.08.2021, one witness was examined and another witness Kulbhushan Sharma was bound down for the next date i.e. 07.09.2021. On 07.09.2021, though he was present, but again he was not examined and the case remained pending for the next date, for the same purpose. Ultimately, he was examined-in-chief on 13.10.2021 and his cross-examination was deferred, on account of request made by learned counsel for the plaintiff. However, the case remained pending for recording of DWs. Ultimately, the statement of Kulbhushan Sharma DW-8 was completed on 05.01.2022 and no other DW was present. Thereafter again, the case remained pending for this purpose and the defendant closed his evidence on 25.02.2022.

Thereafter, for multiple times, the case was adjourned for rebuttal evidence till 29.7.2022, when the application under Section 151 CPC was filed, at the behest of defendant for seeking permission to be further cross-examined. Reply was sought and ultimately this application was allowed by the court below, vide order dated 12.08.2022. Thereafter again, the case remained pending for the purpose of DWs continuously, till the date of passing of the impugned order i.e. 29.11.2022. Perusal of the zimini orders aforesaid reveals about the remaining witnesses, having been examined by the petitioner, but the crossexamination of DW-1 was not completed and overlooking the aforesaid fact, the evidence was closed by order, at first instance. Thereafter even though while allowing the application, chance for conducting of the further crossexamination was granted, but however, the said witness had never stepped into the witness box, despite opportunity having been given by the Lower Court. Even further, his cross-examination was not conducted, at first instance, on 10.12.2019, for want of record. It was also so mentioned in the application filed under Section 151 CPC. Subsequently, despite the same, the requisite record, which was required to be summoned was overlooked by the court below and also learned counsel for the defendant have never brought into the notice of the Court about the summoning of the said record.

Keeping in view the aforesaid fact situation, without dilating on the merits of the case and conduct of the parties concerned, the impugned order is hereby set aside and the instant revision petition is allowed, subject to payment of Rs.20,000/- as costs, to be deposited with the "*Poor Patient Welfare Fund, PGIMER*", within a period of four days from today onwards.

On query by the Court, it has been disclosed that the next date fixed before the court below is 06.02.2024. In the given circumstances, the petitioner is directed to make appearance before the court below on the date fixed i.e. 06.02.2024. On appearance of the petitioner, Vijay Kumar, who is being examined as DW-1, the Court may to its convenience record the further statement of the said witness, within a period of three weeks after his making appearance. Also, it is made clear that the record, which is required to be summoned for conducting of the cross-examination, should also be furnished to the court, within a period of three days of the counsel, for the plaintiff making appearance.

Accordingly, the instant revision petition stands disposed of.

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