
(2013) 07 P&H CK 0475
In the Punjab And Haryana At Chandigarh
Case No : CR No. 4041 of 2013

Lalit Kumar

APPELLANT

Vs

Punjab State Power Corporation Ltd. Patiala and Others

RESPONDENT

Date of Decision : 09-07-2013

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2013) 07 P&H CK 0475

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Advocate : S.S. Majithia, for the Appellant;

Final Decision : Allowed

Judgement

L.N. Mittal, J.—In this revision petition filed under Article 227 of the Constitution of India by plaintiff Lalit Kumar, challenge is to orders dated 02.04.2013 Annexure P-4 and 29.04.2013 Annexure P-5 passed by the trial Court thereby treating the cross examination of DW Kashmir Singh and DW-2 and DW-3 as nil on behalf of the plaintiff-petitioner. I have heard learned counsel for the petitioner and perused the case file.

2. Counsel for the petitioner contended that on 26.02.2013, the case was told by the reader to have been adjourned to 24.04.2013 and accordingly counsel for the plaintiff-petitioner appeared in the trial Court on 24.04.2013 and the case had also been listed in the cause list on that date but file of the case was not traceable and accordingly plaintiff moved application for tracing the file, which was ultimately traced on 22.05.2013. It was pointed out that, however, in the record of the trial Court, the case was adjourned on 26.02.2013 to 02.04.2013 and subsequently to 29.04.2013, but on those two dates of hearing, counsel for the plaintiff-petitioner was not present in the trial Court because he had noted the date as 24.04.2013 and, therefore, witnesses of defendants could not be cross-examined on those dates. In support of these contentions, counsel for petitioner has referred to photostat copies of diary of the counsel for the plaintiff

in the lower Court for 26.02.2013 and 24.04.2013.

3. The contentions have considerable force. The contentions are supported by entries in the diary of the counsel in the lower Court. Even otherwise, there is no reason why the witnesses of the defendants would not have been cross-examined at all on behalf of the plaintiff-petitioner. In the event of no cross-examination of the witness, his statement in examination-in-chief would be taken to have been admitted by the plaintiff and resultantly the plaintiff would be defeated by default.

4. In the aforesaid circumstances, I am of the considered opinion that ends of justice require that another opportunity should be granted to the plaintiff-petitioner for cross-examination of the aforesaid witnesses, subject to payment of some costs.

5. I intend to dispose of the instant revision petition without issuing notice to defendants/respondents so as to avoid further delay in disposal of the suit and also to save the respondents of the expenses they may have to incur in engaging counsel for the revision petition if notice thereof is issued to them. Resultantly, instant revision petition is allowed and trial Court is directed to grant only one more effective opportunity to the plaintiff-petitioner for cross-examination of witnesses of the defendants i.e. DW-Kashmir Singh and DW-2 and DW-3 subject to payment of Rs. 5,000/- as costs precedent which would also include the expenses of the aforesaid witnesses to be produced by the defendants for cross-examination.