
(1997) 02 P&H CK 0065
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2416 of 1996

Ved Parkash Kapoor

APPELLANT

Vs

Krishan Kanta Tandon

RESPONDENT

Date of Decision : 26-02-1997

Acts Referred:

Citation : (1997) 2 LLR 9 : (1997) 2 RCR(Civil) 683

Hon'ble Judges : H.S.Brar, J

Advocate : Mr. D.R. Mahajan, Advocate, Mr. B.R. Mahajan, Advocate., Advocates for appearing Parties

Judgement

H.S. Brar, J.—In this revision petition, an order dated 20.5.1996 of the Additional Civil Judge (Sr. Division), Amritsar vide which he dismissed the application of the petitionerdefendant (hereinafter called "the defendant") for disallowing the plaintiffrespondent (hereinafter called the "plaintiff") from examining the arbitrator as a witness in rebuttal has been challenged.

2. Learned counsel for the petitioner submits that the arbitrator cannot be summoned as a witness in routine unless cogent grounds for his examination within permissible limits are made out. The order of the trial court is liable to be set aside, according to the learned counsel, on the ground that it has not given any cogent reasons for allowing the plaintiff to summon the arbitrator as a witness. The trial Court, according to the counsel, has failed to exercise its proper jurisdiction. He has cited JT 1989(3) SC 366, State of Orissa v. Naranjan Swain to substantiate his arguments.

3. The relevant portion of the order of Additional Civil Judge (Senior Division), Amritsar vide which he has ordered the summoning of the arbitrator is reproduced as under :

"The onus of proof of issues No. 1, 2, 4, 5, 6, 7, 8 and 9, framed on 16.11.1993, was on the defendantsobjector. In my opinion, the plaintiffrespondent has a legitimate right of leading evidence to rebut the defendant objector's evidence

on these issues. It cannot be anticipated beforehand whether the questions to be put to Sh. S.K. Bansal arbitrator would be in the nature of rebuttal to the evidence on these issues or they would touch upon the issue, the onus of which was on the plaintiffrespondent. That aspect of the case has to be examined and adjudicated upon when he is actually in the witness box and questions are put to him. In the circumstances, no case for omnibus refusal to the plaintiffrespondent to examine Sh. S.K. Bansal. With these observations the request of the defendantrespondent for not permitting the plaintiff to examine PW S.K. Bansal is also declined".

4. Even though an arbitrator is a competent witness, the court must exercise the power of calling him as a witness cautiously and sparingly and not in a routine manner. It is, thus, obvious that when the court is requested to call the arbitrator for examination as a witness it must be shown that there is some cogent ground for his examination within the permissible limits as has been settled by the Supreme Court. Nothing has been shown in the present case to indicate that it was at all necessary to call the arbitrator as a witness to depose on any matter which could legitimately be examined by the court in the proceedings. The learned trial court should have given some cogent grounds for examining the arbitrator within the permissible limits. The trial court has not even indicated any reason in its order as to whether it was at all necessary to call the arbitrator as a witness to depose on any matter which would legitimately be examined by the court in the proceedings.

5. Consequently, order dated 20.5.1996 of Additional Civil Judge (Senior Division), Amritsar is set aside and the case is remanded back to the trial court to decide the matter afresh after taking into consideration the law laid down by the Hon''ble Supreme Court in State of Orissa v. Naranjan Swain's case (supra).

This revision petition, thus, stands allowed to the extent stated above.