

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.8827 of 2014
Date of decision:24.12.2014

Subhash Chander

....Petitioner

Versus

Mohinder Pal & others

.....Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.C.L.Verma, Advocate, for the petitioner.

G.S.Sandhawalia J.(Oral)

Challenge in the present revision petition is to the order dated 18.12.2014 (Annexure P1), passed by the Civil Judge (Jr.Divn.), Ludhiana, whereby the cross-examination of Mohinder Pal, defendant No.1, who had appeared as witness, has been treated as nil on account of the non-availability of the Senior Counsel for the plaintiff-petitioner.

Counsel for the petitioner submits that it is a suit for possession by way of partition regarding the four properties mentioned. He has referred to the zimni orders passed by the Trial Court to point out that the said witness had appeared as DW1 and was partly examined on 15.11.2014 and the rest of the cross-examination had been deferred at the counsel's request and the case had been adjourned for further cross-examination. On 01.12.2014, the said witness was not present and the matter was sent to the Lok Adalat and on 06.12.2014, matter was adjourned to 11.12.2014 for compromise. On 11.12.2014, more time was sought for effecting compromise and the case was adjourned to 18.12.2014, when the impugned order was passed. Accordingly, it is submitted that petitioner had not got adequate notice when the impugned order was passed and had not got

the matter was being referred to the Lok Adalat and the counsel could not cross-examine the witness. It is submitted that in such circumstances, for no fault of the petitioner, he cannot be prejudiced.

It is settled principle that rules of procedure are handmaids of justice and technicalities are not to come in the way. The matter is to be decided on merits and not on the basis of default committed by the party, as serious civil consequences are involved. Keeping in view the said principles, the impugned order is not sustainable and the same is set aside. The Trial Court shall give effective opportunity to the petitioner to cross-examine the witness, subject to payment of costs of ₹3000/-, to be paid to the defendants.

Keeping in view the above facts and circumstances of the case, this Court is of the opinion that there is no requirement of issuing notice to the respondents as it will unnecessarily entail expenses and delay the matter. However, it is open to the respondents to file an appropriate application for recalling of the order, in case there is any concealment of fact.

With the abovesaid observations, the present revision petition stands allowed.

24.12.2014
sailesh

(G.S.SANDHAWALIA)
JUDGE