

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No.1275 of 2015

Date of decision: 23.02.2015

Inderjeet Singh and another

....Petitioners

Versus

Iqbal Singh

...Respondent

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

Present: Mr. Rakesh K. Kaundal, Advocate for the petitioners.

G.S.Sandhawalia J.(Oral)

Challenge in the present revision petition filed under Article 227 of the Constitution of India by the petitioners-defendants is to the order dated 1.5.2014 (Annexure P/2) and the order dated 2.2.2015 (Annexure P/4).

Vide impugned order dated 1.5.2014 (Annexure P/2) cross-examination of the plaintiff witness was treated as 'nil' on account of non payment of cost of ₹ 1,000/- by the defendants who had earlier also not cross-examined the said witness. The case has proceeded thereafter and other witnesses were also examined but the defendants never chose to agitate against the said order. Thus, the said order is not liable to be interfered with at this belated stage.

Regarding the subsequent order dated 2.2.2015 passed by the Civil Judge (Junior Division), Chandigarh, the examination in chief of DW1 has been treated as nil and defendants' evidence has been closed. A perusal of the zimini orders would go on to show that the petitioner-defendant had tendered his affidavit on 8.1.2015. The Bar was observing no work day on 16.1.2015 and therefore, he could not be cross-examined on the said day. Though he was not present on 21.1.2015 but on 28.1.2015 his cross examination was not conducted as the counsel for the plaintiff was not available. The case was adjourned to 2.2.2015 when the impugned order has been passed.

Counsel for the petitioners has argued that the petitioners would be gravely prejudiced if they are not able to defend their case by depositing in

BY DEEPA KUMAR, ADVOCATE
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Chandigarh

support of their written statement and on two occasions there was no fault on their behalf as on one occasion Bar was observing no work day and on the other date, counsel for the plaintiff had taken time to cross-examine the witness.

Keeping in view the above facts and circumstances of this case, this Court is of the opinion that there is no requirement of issuing notice to the respondents as it will unnecessarily entail unnecessary 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.

After hearing counsel for the petitioners and keeping in view the principle that the Court has to decide the matter on merits and not on technicalities and rules of procedure are handmaids of justice, order dated 2.2.2015 (Annexure P/4) is set aside subject to payment of ₹ 5,000/- as costs to be paid to the opposite party for the delay of the case. The petitioner shall put in appearance for the purpose of cross-examination on 25.2.2015, the date already fixed before the trial Court.

Accordingly, with the aforesaid observations, the present revision is partly allowed.

23.02.2015
Pka

(G.S.SANDHAWALIA)
JUDGE