

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.1282 of 2015
Date of decision:25.02.2015

Gurmohinder Pal Singh Saggu

....Petitioner

Versus

Bimla Budwal

.....Respondent

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

Present: Mr.Pankaj Maini, Advocate, for the petitioner.

G.S.Sandhawalialia J.(Oral)

Challenge in the present revision petition is to the order dated 04.02.2015 (Annexure P7A Colly), whereby the Trial Court has held that the plaintiff-defendant was present for cross-examination but inspite of several opportunities given, cross-examination was not conducted and therefore, the same was treated as 'nil opportunity given'. It was also noticed that the costs imposed on the earlier date had not been paid.

The suit is for permanent injunction restraining the defendant from carrying out construction from the adjoining walls of house No.173, Phase II SAS Nagar, Mohali and not to encroach upon the common wall area. The defendant had put in appearance and submitted her affidavit on 07.10.2014 and thereafter, continued to be present on 21.10.2014, 12.11.2014 and 05.12.2014, but she was not cross-examined by the counsel for the plaintiff. On 19.01.2015, costs were imposed of ₹1500/-, to be paid to the witness apart from the previous costs of ₹500/- to be deposited with the DLSA, which was imposed on 12.11.2014.

The ground for not cross-examining taken was that CR No.397 of 2015 had been filed in this Court. The said revision petition has been dismissed today, wherein the challenge is to the order dated 01.10.2012 where the right of

the petitioner to file reply to the counter claim has been struck off. It has been noticed in the said petition that there is delay in challenging the order and therefore, no indulgence could be granted. The Trial Court has noticed that there was no stay by this Court and therefore, the cross-examination could not be deferred on this ground merely because of the pendency of the revision petition. It is also to be noticed that the witness concerned is residing abroad and had to go back on 13.02.2015 and therefore, there was deliberate act of not examining the witness as she had to go back. The costs were also not paid which led to the passing of the impugned order.

The above sequence of events would go on to show that no indulgence could be given to the petitioner. The defendant had led evidence on 22.05.2012 and three effective opportunities were granted to cross-examine the defendant, i.e., on 21.10.2014, 12.11.2014 and 05.12.2014. Accordingly, this Court is reluctant to interfere since it has been held by the Full Bench of the this Court in *Shri Anand Parkash Vs. Shri Bharat Bhushan Rai & another 1981 AIR (Punjab) 269* held that when special costs are imposed, the condition precedent would be the payment of those costs before further prosecution of the suit can be allowed.

In such circumstances, once the petitioner himself has violated the binding precedent of the Full Bench of the Apex Court, no relief can be granted to the petitioner and consequently, the present revision petition is, hereby, dismissed.

25.02.2015
sailesh

(G.S.SANDHAWALIA)
JUDGE