

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CR No.223 of 2015

Date of Decision:-12.01.2015

Rajbir Singh.

.....Petitioner.

Versus

Sukhbir Singh & Anr.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Ashish Gupta, Advocate for the Petitioner.

JASWANT SINGH, J.(ORAL)

Defendant is in revision aggrieved by the order dated 24.04.2014 (P-1) passed by the learned Civil Judge(Jr. Divn.), Sri Mukatsar Sahib whereby the cross examination of PW Malkit Singh was treated as “Nil”; further challenge is to the order dated 05.12.2014 (P-4) passed by the learned trial Court dismissing the application of the petitioner/defendant for recalling of the order dated 24.04.2014 (P-1).

It is averred that the respondent/plaintiff has filed a suit for possession and recovery of mesne profits at the rate of Rs.20,000/- per month for the residential property.

It is contended that the witness Malkit Singh after tendering his affidavit in examination in chief never appeared for his cross examination except on the said date i.e. 24.04.2014, when due to pre-occupation of the counsel for the defendant he could not be cross examined. It is next

contended that for the inconvenience he can be sufficiently compensated and thus the substantial right of the petitioner/defendant protected. It is also contended that the evidence of the defendant is yet to commence.

Having heard learned Counsel for the petitioner, it is deemed expedient in the interest of justice to grant one opportunity to the petitioner/defendant to cross examine PW Malkit Singh. Accordingly the impugned order dated 24.04.2014 (P-1) to the extent that it treats his cross examination as "Nil" is set aside. The trial Court is directed to summon the said witness Malkit Singh on a date for conclusion of his cross examination subject to payment of cost of Rs.5,000/- by way of demand draft to the witness Malkit Singh as a condition precedent.

This order is being passed without issuing notice to the opposite side in order to avoid further delay in the matter and to save them from unnecessary litigation expenses. Moreover, they have been adequately compensated by way of payment of cost. However, if the respondents/plaintiffs are still aggrieved by this order, this would be at liberty to seek recalling of the same.

Allowed in the above terms.

(JASWANT SINGH)
JUDGE

January 12, 2015
Vinay