

*IN THE HIGH COURT FOR THE STATES OF PUNJAB
AND HARYANA AT CHANDIGARH.*

C.R. 2649 of 2014

Date of decision:- 3.3.2015

Joginder Kaur

Petitioner

vs.

Amrik Singh and others

Respondent

Present: Mr. Sudeep Mahajan, Advocate
None for respondents 2 to 5

M.M.S.BEDI,J.

This order will dispose of the present revision petition, filed under Article 227 of the Constitution of India, by the petitioner against impugned order dated 31.1.2014 passed by learned Civil Judge (J.D.), Amritsar, by virtue of which the trial court, without granting an effective opportunity to cross-examine the witness of defendant- respondents, has ordered the closing of the cross-examination of defendants' witness AW 1 Jatinderbir Singh. An ex-parte decree for injunction has been passed in favour of the petitioner as a plaintiff on 25.1.2006. An application has been filed by the defendant- respondents under Order 9 Rule 13 CPC for setting aside the ex- parte decree. Reply had been filed on behalf of the plaintiff- petitioner. After framing of issues, when AW-1 Jatinderbir Singh was appearing for the defendant- respondents- applicants on 23.10.2007, his cross- examination was deferred on the request of counsel for the petitioner. On 6.5.2008 the cross-examination was deferred for want of certain documents. The case was adjourned for remaining cross-examination for 24.7.2008. An application was filed on behalf of the plaintiff- petitioner on 13.5.2008 praying that there had been an earlier

litigation regarding the same controversy, in which the matter was compromised and it was necessary to summon the court file for the purpose of cross-examination of AW-1 Jatinderbir Singh. The said application was allowed and an order was passed to summon the file of civil suit **case No. 756/22/3/94/6.9.94 decided on 3.8.1998**. The Clerk from the Record Room was summoned, who had come present on 24.6.2008 and made a statement that the date be given for producing the summoned record. The matter was adjourned for further cross-examination for 26.8.2008 for producing the summoned record. The said record was not produced on four dates of hearing i.e. 26.8.2008, 10.10.2008, 3.12.2008 and 4.2.2009 as the file had not been received from the Record Room. Vide order dated 4.2.2009 a direction was issued to Clerk, Judicial Record Room to produce the file titled *Amarjit Kaur vs. Amrik Singh* and the witness was bound down for 8.4.2009. On 8.4.2009 PW Guljinder Singh Clerk made a statement that the summoned record could not be traced despite best efforts. The request for time to trace the record was accepted and the witness was again bound down for 25.5.2009 with a direction to the concerned official to bring the summoned record. On 25.5.2009 the concerned Clerk did not come present, as such bailable warrants were issued against the said witness for 8.8.2009. The bailable warrants could not be issued for want of warrant fee. Thereafter, on 30.11.2009 Ashok Kumar Clerk, Record Room, came present and sought time to produce the summoned file. He was bound down for 8.3.2010 and was directed to produce the summoned record. Bailable warrants were issued against Ashok Kumar for 23.10.2010 when he failed to appear on different dates. On 2.2.2012 bailable warrants issued against the concerned Clerk were received unexecuted, as such, bailable warrants

were again issued for 19.3.2012. Despite different dates having been given by the lower court for summoning the file, the evidence of PW 1 could not be completed. Meanwhile, AW 2 Baljinder Singh was cross-examined and his cross-examination was deferred for different dates. Sequence of the above said events indicates that before the passing of the impugned order dated 31.1.2014, the record of the court was not received. On 31.1.2014, the trial court passed the following order:-

“ At the stage, it has come to my notice that the name of the counsel has wrongly mentioned and its stands corrected.

Today, case is fixed for evidence of applicant subject to last opportunity. Once again, witness of applicant are present but counsel for respondent has not come present despite calling case since morning. Respondent is present in person. It is already 3.30 PM. Therefore, this court is of the considered opinion that further wait for respondent to cross-examine the witness of applicant is not interest of justice. Therefore, it is treated as opportunity given nil. As more than 30 effective opportunities are already availed by applicant to conclude its evidence and same is still un-concluded. Therefore, it stands closed by order. Now, to come up on 6.2.2014 for evidence of respondent. All the witness be summoned for the date fixed at own responsibility. Dasti can be obtained.

Sd/-

(Hem Amrit Mahi)”

A perusal of the above said order indicates that the court has treated the cross-examination of the applicant as 'nil' and closed the evidence by order.

The sequence, mentioned herein above and the perusal of the interim orders reproduced in the grounds of revision petition, indicate that the case had been adjourned for a number of dates for production of the

court file and cross- examination of AW-1 Jatinderbir Singh. The lower court could have adopted coercive methods for ensuring the production of the file. The lower court could have issued a direction that the certified copy of the settlement, if any, could be put to the witness. The evidence, in the present case, has been closed without giving a fair opportunity to cross-examine the witness.

In view of the above said circumstances, I am of the considered opinion that the order dated 31.1.2014, passed by Civil Judge (J.D.) Amritsar, closing the evidence of the applicant- respondents without giving the plaintiff- petitioner an effective opportunity to cross-examine the witness, deserves to be set aside.

Accordingly, the petition is allowed and the impugned order dated 31.1.2014 is hereby set side. A direction is issued to the trial court to summon the record, in case it is deemed necessary for the cross-examination through the Record Keeper/ Incharge Record Room by following the procedure mentioned in Order 16 Rules 10 and 12 CPC. The parties are directed to appear before the trial court on 21.3.2014 for further proceedings. The plaintiff- petitioner will be given an effective opportunity to cross-examine the witness AW-1 Jatinderbir Singh. It will also be open to the plaintiff- petitioner to avail the alternative remedy, available to her to prove the document under Order 12 Rules 1 and 2 CPC.

March 3 ,2015
TSM

(M.M.S.BEDI)
JUDGE