

CR No. 3013 of 2015 (O&M)

Date of Decision: 4.5.2015

Parminder Singh**...Petitioner****versus****Sukhminder Singh and others****....Respondents****CORAM: - HON'BLE MR. JUSTICE K.KANNAN**

Present: - Mr. J.S. Dhaliwal, Advocate for the petitioner.

K.KANNAN, J.

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Petitioner who is the plaintiff is aggrieved that PW-2 Jaswinder Singh who had not been cross-examined on the failure of the defendant to turn up when the cross examination was treated as nil, is now permitted by the Court to re-open the evidence. This complaint is that the witness is living abroad and he cannot be brought to Court without considerable delay and expense. The petitioner would point out that the plaintiff had brought his witnesses at every hearing but the defendants were not ready for cross-examination on several occasions.

The counsel would urge that even when an application was filed for permission of cross-examination of PW-1 (the present petitioner) there was no such permission for cross-examination of PW-2 Jaswinder Singh whose examination in chief had also been available on Court record and the defendants deliberately delayed in filing the application. PW-1 was permitted to be cross-examined and the application for cross-examination of PW-2 has also been permitted vide the order dated 17.1.2015.

Learned counsel appearing on behalf of the plaintiff would want a direction of this Court in its supervisory jurisdiction that the trial of the suit is not allowed to linger on in the manner that it is done and that the defendants shall be made to take the trial work seriously and do not seek unnecessary adjournments. If the defendants had not availed the opportunity to cross-examine the witnesses, the Court must really assess the inconvenience of the party and the witnesses who are brought to Court at considerable expense and impose costs keeping in view the costs of transportation from the place of residence to Court and the loss of revenue or income that could be sustained by a party who is available in Court but cannot be examined by lapse or delay on the part of opposite party.

If witness is in foreign country, advancements in communication technology make possible for the Courts to avail of the facility of examination through video conferencing. The care that should be taken is that the presence of a party as a witness in foreign country must be in a secure place and that the questions posed and answers to be elicited shall be done without any props or devices to respond which will undermine the integrity of the deposition. The plaintiff is at liberty to approach for assistance of the Indian Consulate in the foreign country and seek for permission for any secure place for giving evidence at a pre-determined time, which shall be the Court hours. If such a facility is not available in the Embassy, any other place which can assure the integrity of evidence in a foreign country may be secured and the information given to the Court. When such information is given, the expense for such evidence shall be

elicited and directed to be paid by the defendants who have now sought the permission of the Court to cross-examine. The expenses shall be collected from by the defendants before the permission to cross-examine is given. If the amount is not paid, the opportunity granted through the order issued on 17.1.2015 for cross-examination of PW-2 will be taken as withdrawn.

In the order now passed, I have dispensed with notice only because the permission for cross-examination is not withdrawn and the defendants who have already caused the delay do not contribute to further delay.

The impugned order is modified and the civil revision is allowed on the above terms. The respondents are at liberty to approach this Court for review of this order, if any misrepresentation had been made or if any important aspect had been omitted to be taken notice of, before passing this order.

(K.KANNAN)
JUDGE

4.5.2015
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