

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR-385-2015 (O&M)

Date of decision: 6.2.2015

Manjit Singh

..... Petitioner

Versus

Harjit Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

PRESENT: Mr. RK Shukla, Advocate for the petitioner.

R.P. NAGRATH, J. (ORAL)

CM-2803-CII-2015

Application is allowed as prayed for.

Copies of plaint Annexure P-4, written statement Annexure P-5, replication Annexure P-6, statement of PW-1 Annexure P-7 and statement of PW-2 Annexure P-8 are taken on record, subject to all just exceptions.

CR-385-2015

The petitioner has invoked revisional jurisdiction of this Court under Article 227 of the Constitution of India for setting aside the order dated 23.12.2014 (Annexure P-3) passed by the trial Court whereby the application filed by the petitioner for recalling PW-1 and PW-2 for

further cross-examination was dismissed, with a further prayer for permission to recall the aforesaid witnesses for further cross-examination.

The suit was filed by the plaintiff-respondent for recovery of an amount of ₹ 10,59,640/- on the basis of agreement to sell dated 10.5.2007. PW-1 plaintiff-respondent and another witness PW-2 Harbinder Singh were cross-examined by the petitioner on 19.12.2011. After both the parties have led their evidence, the petitioner filed an application dated 19.12.2014 (Annexure P-1) before the trial Court for recalling PW- 1 and PW-2 for further cross-examination. According to the petitioner, certain questions could not be put to these witnesses with regard to a previous agreement to sell dated 13.6.2006 and this fact came to the notice of the petitioner when he engaged another counsel who was preparing the matter for final arguments. The learned trial Court declined the prayer of the petitioner vide impugned order dated 23.12.2014 (Annexure P-3).

I have heard learned counsel for the petitioner and carefully perused the impugned order as well as the paper-book and find no merit in the instant petition.

The witnesses have been extensively cross-examined even with regard to the previous agreement, though the witnesses denied the execution of any agreement but the questions on that agreement were put to the witnesses. The petitioner also had the opportunity to prove any such previous agreement during his own evidence. The learned trial Court observed that the suit was earlier decided and appeal was filed by the petitioner against the judgment and decree. The learned Appellate

Court remanded the case back to the trial Court with a direction to provide the petitioner-defendant only one opportunity to lead his evidence, which had since been availed by the petitioner.

It is quite obvious that when once the petitioner-defendant had earlier an opportunity to cross-examine plaintiff's witnesses which he availed the grant of permission to recall them would in the circumstances of the case amount to filling in of lacuna, if any, left in the petitioner's case. Such a permission has thus, rightly been refused by the learned trial Court. There is no ground to interfere in the discretion exercised by the trial Court.

Dismissed.

February 6, 2015
rishu

(R.P. NAGRATH)
JUDGE