

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.439 of 2015
Date of decision:20.02.2015

Kusum Lata

....Petitioner

Versus

Rajpati & others

.....Respondents

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

Present: Mr.Subhash Ahuja, Advocate, for the petitioner.

Mr.Vikrant Hooda, Advocate, for respondent No.1.

G.S.Sandhawalia J.(Oral)

Challenge in the present revision petition, filed by defendant No.2, is to the order dated 02.12.2014 (Annexure P5), whereby the special power of attorney, who is the husband of the present petitioners' right to cross-examine the witnesses-PW3 to PW5, was held to be "nil opportunity given".

While issuing notice of motion on 06.02.2015, this Court noticed as under:

"Submits that since the petitioner being the power of attorney and husband of defendant no.2 was conducting proceedings on his own account and is a retired person, there have been lapses in cross-examining the witnesses which had led to passing of the impugned order dated 2.12.2014 (Annexure P/5) whereby three witnesses PW3 to PW5 who were present could not be cross-examined and it has been observed that 'nil opportunity given'. It is submitted that the suit is for specific performance of plot situated in the urban estate of Sonapat and irreparable loss and injury would be caused if cross-examinations of the said witnesses are not permitted. The petitioner was unwell and is willing to pay heavy costs.

Keeping in view the fact that on an earlier occasion also a sum of ₹ 20,000/- has been ordered as payment of costs for not filing the written statement in time and though the zimini orders would go on to show that the petitioner has been successful in

delaying the trial on at least four effective opportunities when upto five witnesses were present. Keeping in view the fact that rules of procedure are handmaids of justice, this Court is of the opinion that since the case is fixed for 25.2.2015 and the evidence of the plaintiff is still going on and out of five witnesses two have cross-examined on the date the impugned order was passed, the petitioner can be permitted to cross-examine the said witnesses subject to payment of ₹ 25,000/- as costs to the plaintiffs.”

The order of the Court below, as such, cannot be faulted with and the present situation is only a result of the adamant attitude of the petitioner to conduct the proceedings in his personal capacity. However, keeping in view the observations made by this Court earlier on 06.02.2015 and the fact that the petitioner is willing to pay ₹25,000/- as costs to the plaintiff-respondents, to which, no serious objection has been raised by counsel for the respondents, the impugned order dated 02.12.2014 (Annexure P5) is set aside. The petitioner shall be allowed to cross-examine the three witnesses, PW3 to PW5, i.e., on 25.02.2015, who shall be present on the next date before the Court below, as per the undertaking given by the counsel for respondent No.1. It is made clear that in case the witnesses do not appear on the said date, the present petitioner shall be given another effective opportunity to cross-examine the said witnesses. It is, however, made clear that apart from the above, no further indulgence will be granted to the present petitioner for cross-examining PW3 to PW5.

With the abovesaid observations, the present revision petition stands allowed.

20.02.2015
sailesh

(G.S.SANDHAWALIA)
JUDGE