

CR-4412-2015 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CR-4412-2015 (O&M).
Decided on: July 15, 2015.**

Pal Singh

... Petitioner(s)

VERSUS

Jit Singh and another

... Respondent(s)

*** * ***

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

**PRESENT Mr.G.C.Shahpuri, Advocate,
for the petitioner.**

M.M.S. BEDI, J (ORAL).

This is a revision petition against an order dated 17.4.2015 dismissing the application for recalling the order dated 21.3.2014 closing the evidence of the plaintiff- petitioner in a suit under Order XXXIII Rule 1 CPC.

With the assistance of counsel for the petitioner, I have gone through the interim order dated 21.3.2014 recorded by the Local Commissioner that PW.1 Pal Singh and PW.2 Darshan Singh came present on different dates but cross-examination was not conducted by the counsel opposite for one reason or the other and ultimately the Local Commissioner had presented the matter before the Presiding Officer.

A perusal of the order dated 25.4.2014, indicates that the evidence of the plaintiff- petitioner was closed on behalf of

the plaintiff- petitioner and the case was adjourned for tendering documents on next date of hearing.

Counsel for the petitioner has submitted that cross-examination of the said witnesses was not conducted, as such, it will be debatable whether their testimony could be relied upon for the purpose of adjudication of the matter.

I have gone through the interim orders and I am of the opinion that it is for the Court to pass any order when the witnesses are present but if the pleader from the opposite party is not ready to cross-examine the witnesses, in said situation, the Court is required to pass orders as it thinks fit either dispensing with the examination-in-chief or cross-examination of the witness by the party or his pleader not present or not ready.

A reference can be made to provisions of Order XVII Rule 2 (e) CPC which reads as follow: -

“XVII (2) Costs of adjournment—

- (a) *** *** ****
- (b) *** *** ****
- (c) *** *** ****
- (d) *** *** ****

(e) where a witness is present in Court but a party or his pleader is not present or the party or his pleader, though present in Court, is not ready to examine or cross-examine the witness, the Court may, if it thinks fit, record the statement of the

witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be, by the party or his pleader not present or not ready as aforesaid.”

In the present case, the trial Court seems to have not exercised jurisdiction vested in it by recording “Opportunity Given NIL” or to call upon the defendant- respondents to cross-examine the witnesses. Despite the fact that the matter was brought to the notice of the Court, no order pertaining to the cross-examination was passed by the trial Court.

This petition is disposed of in limine with a direction that the plaintiff- petitioner will produce his witnesses on next date of hearing before the trial Court. The trial Court on said date shall pass an order either for denying the cross-examination or considering the cross-examination as “NIL” after giving opportunity or would require counsel for the defendant- respondents to cross-examine the witnesses so that their testimony could be considered for the purpose of final decision of the matter pending before the Court.

The petition is disposed of in limine in order to save the defendant-respondents from unnecessary expenditure and wastage of time and to avoid the delay in decision of the case.

It is made clear that in case the order is not acceptable to the defendant-respondents, it will be open to the

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defendant- respondents to file an application for recalling of the order.

July 15, 2015.
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(M.M.S. BEDI)
JUDGE