

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

C.R. No. 453 of 2015
Date of decision: 23.02.2015

Surjit Singh

....Petitioner(s)

Versus

Bikkar Singh and others

...Respondent(s)

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

Present: Mr. Anurag Arora, Advocate,
for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

Challenge in the present revision petition filed under Article 227 of the Constitution of India is to the order dated 27.11.2014 (Annexure P-3) whereby, the evidence of the petitioner-plaintiff has been closed on account of the non presence of one of the plaintiff witnesses who had already tendered his affidavit on an earlier date but did not come present for cross examination. The Civil Judge (Sr. Divn.), handling NRI cases at Jalandhar accordingly passed the impugned order.

Counsel for the petitioner submits that the case is now fixed for 10.03.2015 and the suit is for permanent injunction and in case the witness is not allowed to be cross examined, he would be gravely prejudiced.

A perusal of the earlier order dated 28.07.2014 would show that the Trial Court was quite liberal and had granted 12 effective opportunities to the petitioner-plaintiff and no fault as such can be found in the order passed. But keeping in view the fact that PW-2 Nand Kishore has already tendered his affidavit and in view of the fact that the petitioner had undergone a bypass surgery on 28.08.2014 and had been advised complete

bed rest for a period of 3 months as per the certificate dated 03.12.2014 (Annexure P4), this Court is of the opinion that the lapse for not producing the said witness on the date concerned has been justified.

In such circumstances, keeping in view the basic principle that the rules of procedure are hand-maids of justice and a party should be given an effective chance to defend his case, specially where serious civil consequences are involved, this Court is of the opinion that the other side can be adequately compensated by payment of costs.

In view of the above, this Court is of the opinion that the present petition is liable to be allowed. No notice is being issued to the respondents as it will unnecessarily entail unnecessary expenses and delay the matter. Even if they put in appearance, the result would remain the same. However, it is open to the respondents to file an appropriate application for recalling of the order in case there is any concealment of fact.

Accordingly, the present revision petition is allowed and the order dated 27.11.2014 (Annexure P-3) is set aside, subject to payment of ₹10,000/- as costs to the opposite party. One opportunity is granted to the petitioner-plaintiff to produce PW-2 Nand Kishore on 10.03.2015, i.e. the date already fixed before the trial Court.

23.02.2015
shivani/sailesh

(G.S. SANDHAWALIA)
JUDGE