

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 500 of 2015
Date of Decision : 21.01.2015

Gurnam Singh

....Petitioner

Versus

Smt. Pooja Rani and another

...Respondents

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

Present: Mr. Manohar Lal, Advocate
for the petitioner.

R.P. Nagrath, J. (Oral)

The petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India seeking to set aside the order dated 23.12.2014 (Annexure P-6) passed by the trial Court vide which application under Order XVIII Rule 17 of the Code of Civil Procedure (CPC) for recalling the witnesses was dismissed. Further prayer is made for permission to cross-examine PW-2 Ranjit Singh and PW-3 Prem Chand.

Learned trial Court has observed as under:-

“9. Further in the present matter, the applicant-defendant has sought recalling of witnesses regarding whom cross-examination was considered nil vide order dated 19.05.2014 and 02.08.2014. On 19.05.2014, an exhaustive order was passed by this Court wherein PW was present for his cross-examination and on that date also the adjournment application was filed by defendants

counsel as he was busy some where else and on previous dates also he was not ready to cross-examine the witness that is why cost was applied and on 17.05.2014, he was busy in another Court in some other suit, that is why he again sought adjournment for PW-3. He already sought three adjournments and on every date the counsel appears after lunch time and the Court accommodates to the level that the case is always taken up after lunch again for the convenience of the parties. Having no other option and despite giving several opportunities when cross-examination was not conducted by defendants, Court granted the reasoned order of discharging of witness and cross opportunity nil because law of adjournment is also very clear that if counsel is busy in some other Court shall not be a ground for adjournment. Had there been any other reason like medical reason or some personal the Court normally tries to be lenient but conduct of this particular case need to be highlighted at this stage. The defendant just to delay the case had previously also filed a transfer application qua this case and for this reason also, he tried to seek adjournment. So, Court levied costs as cross-examination was not conducted because any

pendency of transfer application cannot be interpreted as a stay of the matter. Moreover, plaintiff on the very first day filed three affidavits and counsel for defendant sought adjournment for cross-examination whereas rule of evidence is clear that there is no law which allows that without any reason cross-examination is to be deferred and this Court still gave a standing order that one witness will be cross-examined on one day so that counsel would stay at convenience. Then also, defendant did not mend his ways and kept on filing one application after other by misuse of process. This procedural law is for doing justice not to create impediment or delay in the path of delay of proceedings.

10. *In the present case, defendant always sought adjournment on the ground of non-availability of his counsel that due to his cases in the some other Courts as per their version. It is pertinent to mention here that the adjourned date is always given by the Court according to the consent of the parties and without any reason on 19.05.2014, the learned counsel did not appear. On every hearing, making an excuse i.e. he is looking another case is not justifiable ground in the professional way. The manner of treating the present case by defendants*

is quite clear that they had just tried to delay the matter.

11. *Further, regarding order dated 02.08.2014, inadvertently, the presence of defendants counsel was marked in the zimni order but the reading of zimni order is quite clear wherein it was written that case was fixed for cross-examination and on previous date counsel sought adjournment and cost was levied which was paid. But still on 02.08.2014, counsel did not turn up due to prior engagement in another court. The absence of counsel for the defendant is apparent without any justifiable reason and this Court, on that basis made the cross-examination nil. The purpose of this application is clear that it is just to cause delay in the proceedings as this suit was filed on 15.11.2008 and defendants appeared on 30.05.2009 and on the very first date, he filed an application under Order XI Rule 14 and took two years in getting that disposed of on 06.01.2012 and then written statement filed after nine months delay on 11.10.2012. On next date i.e. 22.11.2012, another application under Order XI Rules 1 and 2 was filed and consumed one and half year for getting that disposed of on 04.03.2014. On first date of evidence, another application was filed*

*under Order VII Rule 14 CPC, which was dismissed on 22.03.2014 and again the cross-examination was deferred on request of defendant counsel. On next date counsel appeared after lunch and cross-examination was not completed as Court time was over. So, on next date also the cross carried on, then an application for adjournment came without any reason, therefore, the cross-examination opportunity was made nil. Same happened with the another witness again and again on every date. This sort of applications are frivolous in order to create disturbance in the Court proceedings and to misuse the process allowed by law. Also, Court has relied upon the authority of Hon'ble Punjab and Haryana High Court **Sarwan vs. Babu, 1999 (1) CCC 293**, wherein it was held that when large number of opportunities as mentioned in various order has been given, but counsel failed to cross-examine, in this situation, applicant is not entitled to recall the witness in cross-examination."*

Learned trial Court also observed in the impugned order that costs imposed on 22.10.2014 were not deposited in the welfare fund of District Bar Association but now as per Annexure P-7 the cost has been deposited only on 17.01.2015.

The conduct in the proceedings on behalf of the petitioner

as observed by the trial Court would show that the whole purpose was to delay the proceedings of the trial which seems to be so deliberate that this Court finds no scope of exercising any discretion in favour of the petitioner in exercise of revisional jurisdiction under Article 227 of the Constitution of India requiring interference of this Court.

There is no merit in the instant petition and the same is dismissed.

January 21, 2015
jk

(R.P. NAGRATH)
JUDGE