

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.5455 of 2015

Date of decision: 24.08.2015

Rajesh Kumar

... Petitioner

Versus

Kulwant Kaur

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Hitesh Kumar Sammi, Advocate,
for the petitioner.

1. Whether reporters of 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?

ARUN PALLI J. (Oral)

Vide order being assailed, dated 05.08.2015, rendered by Civil Judge (Jr. Divn.), Amritsar, the application moved by the petitioner-tenant seeking an opportunity to cross-examine the witnesses of the respondent-landlord has since been rejected. The conclusion recorded by the learned trial court reads as thus:

“A bare perusal of the file shows that Counsel for respondent was present in the Court on 07.02.2015 and when he failed to cross examine the applicant’s witnesses, then the cross examination of applicant’s witnesses was recorded as Nil, opportunity given. Perusal of zimini order dated 07.02.2015 clearly shows the presence of Counsel for respondent in the Court on 07.02.2015. So, the plea taken by respondent that he noted wrong date falsifies and accordingly, once he has wasted the opportunity to cross examine the

witnesses, he cannot get any fresh opportunity for the same purpose. I do not find any merit in the application and it deserves dismissal and this is ordered accordingly.

Now, to come up on 04.09.2015 for remaining evidence of applicant.”

I have heard learned counsel for the petitioner and perused the paper book.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that although the petitioner has apparently been negligent in pursuing his cause but this is also true that foreclosure of his right to cross-examine respondent/landlord's witness would severally effect his right and interest. And might result in miscarriage of justice. For the delay that has occurred on account of negligence of the petitioner, respondent could be compensated with some suitable costs. Therefore, to avert any further delay and the expense that respondent-landlord shall have to incur to defend these proceedings, no formal notice is being issued to the respondent-landlord. Accordingly, the order dated 05.08.2015, as also the order dated 07.02.2015, are set aside and the petition is disposed of with these observations:

i) Learned trial court shall afford one effective opportunity to the petitioner to cross-examine the respondent's witness, namely, Sardul Singh (AW2) on the date to be fixed by the trial court in this regard. However, if for any

reason, the said witness is not cross-examined by the petitioner, no further opportunity shall be granted in this regard.

ii) This, however, shall be subject to a cost of ₹ 10,000/-, which shall be condition precedent.

August 24, 2015
Rajan

(Arun Palli)
Judge