

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

**Civil Revision No.5824 of 2015
Date of Decision: September 08, 2015**

Sharafat Ali

.... Petitioner

vs.

Ranbir Singh and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. S.D. Bansal, Advocate for the petitioner.

Ms. Ekta Thakur, Advocate for the Caveators-respondents

- 1. Whether Reporters of Local Newspapers 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?*

Kuldip Singh J.(Oral)

Impugned in the present revision petition is the order dated 21.07.2015 passed by learned Civil Judge (Jr. Divn.), Chandigarh, vide which the evidence of the plaintiff-petitioner was closed by orders.

It comes out that earlier also the evidence of the plaintiff-petitioner was closed by orders. The plaintiff-petitioner approached this Court and this Court vide order dated 30.03.2015 granted one effective opportunity to the plaintiff-petitioner, subject to payment of costs of ₹5,000/-.

What transpired thereafter is reflected from the relevant extract of the order of lower court :

“ -- Plaintiff deposited the requisite costs in the legal aid on 10.04.2015 and he was directed to lead his

entire evidence for 18.04.2015. On 18.04.2015 plaintiff tendered the affidavit of Mohd. Hanif and his cross examination was deferred and case was adjourned to 16.05.2015. The Court was on leave on that date and case was fixed for 04.07.2015. On 04.07.2015, the witness was duly present in the Court but he could not be examined and the case was adjourned on the request of learned counsel for the defendant for 07.07.2015. On 07.07.2015, the witness was duly present but his cross-examination was not done by defendant and case was fixed for 16.07.2015. On 16.07.2015 one witness was duly examined and the other witness present in the Court could not be examined as Court time was over. Accordingly, case was adjourned for 21.07.2015. On 21.07.2005, the witness of plaintiff Aftab Alam was duly examined. After his examination the other witness of the plaintiff who was present in the Court was not traceable for cross examination. Counsel for the plaintiff was asked to produce other witness so that he could be examined as learned counsel for defendant was ready for cross examination but despite efforts the said witness could not be located. After some time learned counsel for the plaintiff requested for a short adjournment and undertakes to produce the said witness on the next date of hearing. This request was opposed by learned counsel for the defendant and he argued that only one effective opportunity has been granted to plaintiff and if witness is not available today then evidence of the plaintiff has to be closed by Court order. Perusal of the order of Hon'ble High Court dated 30.03.2015 reveals that the plaintiff has been

granted one effective opportunity to conclude his evidence. Today after cross examination of PW-1 if other witness is not available then it is the responsibility of plaintiff to make him available for cross examination as he has been given the opportunity at own risk and responsibility which is specifically made clear by Hon'ble High Court in that order. It was private witness of the plaintiff making him available for cross examination is the duty of plaintiff."

Learned counsel for the plaintiff-petitioner contends that the affidavit of Mohd. Hanif has already been produced. He was present in the court. He received a call regarding the admission of his daughter in the hospital. Therefore, he had to go there. He came back during court hours at about 3.50 PM but the cross examination was not done. It is further contended that only cross examination of the Mohd. Hanif is to be done.

It comes out that in the name of one effective opportunity, one or the other party was granted adjournment, which is not appreciable. A witness can not appear at the fag end of the court time and claim that he should be examined.

However, keeping in view the interest of justice, let Mohd. Hanif be produced before the lower court on 29.09.2015 at 10.30 a.m. Both the counsel shall remain present along with the witness and the lower court will not grant any adjournment to the either party for cross examination. The cross examination shall be completed on the same day and if not completed, the same shall be continued till

the next day and the remaining evidence of the plaintiff-petitioner shall stand closed. The plaintiff-petitioner shall pay ₹5,000/- as costs towards District Legal Aid Funds, Chandigarh.

The revision petition is, accordingly, allowed.

September 08, 2015
sarita

(KULDIP SINGH)
JUDGE