

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Civil Revision No.5776 of 2014

Date of decision: 15.12.2015

Labh Singh

.....Petitioner

versus

Ram Singh

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.D.S. Gurna, Advocate for the petitioner
Mr.Mohinder Singh, Advocate for
Mr.D.P.Singh, Advocate for the respondent

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 is the order dated 1.8.2014, passed by the learned Civil Judge, Junior Division, Khanna, vide which, the cross-examination of Ram Singh (PW1) and Kesar Singh (PW2) was treated as nil.

The perusal of the impugned order shows that said two witnesses, namely, Ram Singh (PW1) and Kesar Singh (PW2) filed their affidavits in examination-in chief. Counsel for the defendant went abroad and a new counsel Mr.R.R.Mehta was engaged on 13.2.2009. Thereafter, three opportunities were granted extending nearly one year i.e. 7.3.2011, 2.11.2011 and 15.2.2011 to cross-examine the said witnesses and when the cross-examination was not

conducted, it was treated as nil.

From its face, there is nothing illegal in the impugned order. When the witnesses are not cross-examined for nearly one year, the Court is left with no other option but to proceed further and treat the cross-examination as nil. On behalf of the petitioner, a prayer has been made that the suit is for specific performance of the agreement and that if the witnesses are not cross-examined, it will give a walk over to the plaintiff. In this regard, it has to be noticed that there has to be a limit to the number of opportunities to be granted for conducting cross-examination of the witnesses. The plight of the witnesses has also to be appreciated. In this case, witnesses appeared on three dates for cross-examination and on every date, they were returned without being cross-examined. If they do not appear on the next date, they are to be summoned by way of bailable warrants to compel their appearance. In this way, the witnesses in the civil case virtually became accused. The defendant took the pleasure in getting the adjournments extending over nearly for one year on the ground that his previous counsel has gone abroad and thereafter, the new counsel was engaged about two years before the said adjournments were granted.

In these circumstances, I am of the view that on merits, defendant is not entitled to any indulgence by this Court. However, keeping in view the fact that the witnesses can be compensated in terms of the costs and the suit is for specific performance of agreement in which valuable rights of the parties are involved, as a one time measure, the defendant is granted one opportunity to cross-

examine Ram Singh (PW1) and Kesar Singh (PW2) subject to payment of Rs.5000/- each to the said witnesses and another sum of Rs.20,000/- to be paid in District Legal Aid Fund, Ludhiana.

In view above observations, the revision stands allowed.

15.12.2015
gk

(Kuldip Singh)
Judge