IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

139 **Civil Revision No.7213 of 2015**
Date of Decision:30.10.2015

Balbir Singh ....petitioner

Versus

Gian Singh and others .....respondents

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

1.Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.C.S.Sharma, Advocate
for the petitioner

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ARUN PALLI, J.(ORAL):-

Vide order being assailed, dated 29.09.2015 (Annexure P1), rendered by Civil Judge (Jr.Divn.), Phillaur, evidence of the petitioner-defendant No.1 had since been closed by order, which reads as thus:

> ***"Today the case is fixed for evidence of the applicant. Case called several times since morning, but the applicant has not come present to lead his evidence. The perusal of the case file reveals that the applicant has availed 23 effective opportunities to lead his evidence, but he failed every time without any sufficient reason. Till today, the applicant has examined only one witness namely Ashok Kumar as AW1 in this case but the said witness after tendering his evidence never turned up before this Court to get him cross examined. In such like circumstances, this Court is of opinion that adjourning the case again for the evidence of the applicant will not be a justified step. Therefore, evidence of the applicant is***

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closed by order.

To come up on 01.10.2015 for evidence of the respondent."

Learned counsel for the petitioner submits that the petitioner had examined his attorney Ashok Kumar as AW1, in support of his claim, but on the subsequent dates, he could not be produced for the purpose of cross-examination. It is contended that the petitioner only intends to examine Ashok Kumar to prove certain documents and to enable the respondent to cross examine him.

Undoubtedly, the petitioner has been remiss and negligent in pursuing his cause, as despite having been afforded adequate opportunities, he failed to lead and conclude his evidence. But it shall also be true that, in case, he is not afforded one effective opportunity to produce Ashok Kumar (AW1), he shall suffer an irreparable loss, and which might result in miscarriage of justice.

That being so, and, without issuing any notice to respondent No.1 to avert any further delay and the expenses that he shall have to incur to defend these proceedings, the order dated 29.09.2015 is set aside, and the petition is disposed of, in the following terms:

(1)The trial Court shall afford one effective opportunity to the petitioner to examine Ashok Kumar-AW1, subject, however, to costs of Rs.10,000/-, which shall be condition precedent.

(2) The petitioner shall examine the said witness at his own responsibility and without any assistance of the Court.

(3) It is made clear that in case the petitioner fails to produce the said witness on the date fixed by the trial Court, his evidence would be deemed to have been closed.

30.10.2015 **(ARUN PALLI)**
neenu **JUDGE**

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