

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

CR No.7567 of 2015

Date of Decision: November 06, 2015

Kartar Singh (deceased) through LRs Petitioners

vs.

Kashmir Singh and others Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Satish Sabharwal, Advocate for the petitioners.

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 19.10.2015 (Annexure P-4) passed by learned Addl. Civil Judge (Sr. Divn.), Guru Harsahai, whereby the application of the plaintiff for permission to examine Kirpal Singh, attesting witness of the agreement to sell dated 07.10.2004 was allowed, subject to payment of costs of ₹1,500/- to be paid to the defendants.

I have heard learned counsel for the petitioners and have also carefully gone through the case file.

Learned counsel for the petitioners contends that earlier the evidence of the plaintiff was closed by orders and the said order has not been challenged. The case is fixed for rebuttal evidence and arguments when the present application was filed. By passing the said order, the lower court had reviewed its own order, which could not be done.

A perusal of the impugned order shows that when the plaintiff was leading evidence, he tendered into evidence the affidavit of witness Kirpal Singh (attesting witness of the agreement to sell), in the shape of examination-in-chief and his cross-examination was deferred. Thereafter, according to the plaintiff, witness had appeared for 2-3 times for cross-examination. However, on 19.09.2014, the evidence of the plaintiff was closed by orders. The suit is for specific performance of the agreement. It was stated that the examination of Kirpal Singh (attesting witness of the agreement to sell) is necessary to prove the execution of the agreement to sell in question.

After going through the impugned order and facts and circumstances of the case, I am of the view that when a witness had filed affidavit, he submitted himself for cross-examination. Then it was the duty of the Court to grant opportunity to the plaintiff to allow for examination of the witness. If despite granting opportunity, the witness is not produced for cross-examination, only then, the Court has to pass the order to discard the evidence in examination-in-chief also.

A perusal of the order dated 19.09.2014 shows that on the said date, Kirpal Singh, attesting witness had not appeared. However, his affidavit already produced was not discarded by the lower court. The suit is for specific performance and the interest of justice requires that the plaintiff should be allowed to prove the agreement to sell to see whether he is entitled to the relief claimed for or not. Thus, the order passed by the lower court is in the interest

of justice. Therefore, despite the fact that the earlier evidence of the plaintiff was closed by orders, if the lower court has allowed the production of the witness for cross-examination, the same is not to be interfered in the exercise of revisional powers.

Hence, the present revision petition stands dismissed.

November 06, 2015
sarita

(KULDIP SINGH)
JUDGE