

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 7585 of 2015
Date of decision : November 6, 2015

Arvind Swami

..... Petitioner

Versus

Shri Dadu Dayalu Maha Sabha Jaipur and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. D. K. Tuteja , 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?

Amit Rawal, J (oral).

The challenge in the present petition is to the impugned order dated 8.10.2015 whereby cross-examination of PW-1 has been treated as 'Nil'.

Learned counsel appearing on behalf of the petitioner submits that in case, one opportunity is granted the petitioner-defendant, through his counsel, shall cross-examine the respondent-plaintiff PW-1 subject to any terms and conditions imposed by this Court.

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

Before opining about the conduct of the petitioner-defendant, it would be apt to reproduce certain paragraphs of the

impugned order:-

2. *“During the recording of the said cross examination, learned counsel for defendant No.1 has prayed for dererring the further cross-examination of this witness. Heard Learned counsel for defendant No.1. It is submitted by learned counsel for defendant no.1 that till date only 70 percent of cross examination is over and still 30 percent of cross examination is pending and prayed for another adjournment. It is further submitted that learned counsel for defendant No.1 that he is ready to bear the cost for such adjournment. This has been vehemently opposed by learned counsel for plaintiff on the ground that the said cross examination is used as an instrument of oppression and one question is repeated as many as 10 times. It is submitted by learned counsel for plaintiff that cross examination of this witness is pending since 2011 and many effective opportunities have already been availed by the defendnat no.1 to cross examine the said witness. Accordingly, it is prayed that no further opportunity for cross examination be granted and the same may be closed by court orders. At this stage, learned counsel for defendant no.1 has started raising his voice and stated that time at which the court is passing the order may be mentioned in the order. To this learned counsel for defendant no.1 was directed to maintain decorum of the court, but he was adamant in his behaviour.”*

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8. *No doubt, Cross examination of witness is the most cherished right of any adversarial system of justice and should not be curtailed. But it is pertinent to mention here that in the present case, long drawn cross examination is conducted and same questions are*

repeated and asked in a number of ways. Already the said cross examination has been written on 68 pages (3 pages on 25.8.12, 17 pages on 19.9.15, 3 pages on 30.9.15, 17 pages on 3.10.15 and 28 pages on 8.10.15). The courts are not expected to be mere mute spectators if the cross examination of witness results in oppression and hoodwinking of the whole case and the court proceedings, which is writ large particularly in light of the fact that cross examination is pending since last more than four years and many effective opportunities have been sought by defendant no.1 for the said purpose. This is a clear case of abuse of process of law, which cannot be allowed in any circumstance. The said adjournment should not be given merely on the ground that defendant no.1 is ready to bear the cost as the said cost has been imposed twice and the present case is one of those cases in which imposing cost shall not serve any purpose, rather, the same becomes of the easiest way to seek an adjournment.

9. *In view of the above, this court is left with no other alternative, but to decline the said prayer of learned counsel for defendant No.1. Accordingly, the further cross examination of this witness that is PW1 plaintiff is deemed to be nil.”*

The impugned order reveals that innumerable opportunities have been given to the petitioner-defendant to cross examine PW-1. Even some costs have also been imposed but yet cross examination of PW-1 has not been concluded. Though, as per provision of Section 148 of Indian Evidence Act the petitioner-defendant is at liberty to cross examine the witness in order to ascertain the truth, much less test the veracity and demeanor of the

witnesses but it cannot continue for an indefinite period.

The non-cross-examination of PW-1, in my view, has rendered mis-carriage of justice to petitioner-defendant. No prejudice would be caused to the respondent-plaintiff in case, one opportunity is granted to the petitioner-defendant to cross examine PW-1.

Keeping in view the aforementioned fact, the impugned order is set aside. The revision petition is allowed. The petitioner-defendant is granted one opportunity to cross-examine PW-1 subject to payment of costs of ₹50,000/- to be paid to the counsel for the respondents in the High Court. It is made clear that petitioner-defendant shall conclude the same on the date fixed by the trial court. The same shall commence at 10 A.M. and be concluded at 4.00 P.M.

It is made clear that the payment of costs would be condition precedent before availing the opportunity to cross-examine PW-1.

The parties shall appear before the trial court on 10.11.2015. On appearance, the trial court shall grant one opportunity to the petitioner-defendant for cross examination.

Copy of the order be given under the signatures of Reader attached to the Bench.

(AMIT RAWAL)
JUDGE

November 6 , 2015
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