

CR No.790 of 2015

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

**CR No.790 of 2015
Date of decision:04.02.2015**

Kanwaljit Singh and others

...Petitioners

Versus

Kanwal Naresh Singh and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Puneet Jindal, Advocate, and
Mr. Varun Goyal, Advocate, for the petitioners.

Rakesh Kumar Jain, J.

The petitioners are aggrieved against the order dated
05.01.2015, which reads as under:-

“Present: Sh. H.L.Sharma, Adv., counsel for the plaintiff.

Sh. Brijesh Chopra, Adv, counsel for defendant.

DW1 Kanwal Naresh Singh is present since
morning for his remaining cross-examination, however,
he has not been cross-examined. At 12:10 PM the Clerk
of Sh. H.L.Sharma, Advocate appeared and submitted
that the case be adjourned as transfer application is
pending. On asking if there is any stay, he went back.
At 12:35 PM, a written request for adjournment has been
fled by Sh. H.L.Sharma, Advocate on the ground that the
transfer application is pending for 19.01.2015.

He was informed that the case is more than five years old and falls in Action Plan 2014 and witness is waiting since morning and he may be cross-examined and whatever is decided in the transfer application the same will be appreciated accordingly. He submitted that he can cross-examine only upto 1:00 PM as he does not work after that and he has also made request to this effect on one of the previous date. He was asked to cross-examine if he so desires, so that the witness need not come time and again. Thereafter, he went away.

It is pertinent to mention here that DW1 was examined in chief on 29.10.2014 and the case was fixed for 19.11.2014, but he was not cross-examined. Thereafter, DW1 was partly cross-examined on the next date on 28.11.2014 and case was adjourned/fixed for 03.12.2014 on request of learned counsel for plaintiff. The case was against adjourned from 03.12.2014 to 16.12.2014. On 16.12.2014, there was a No Work Day and subsequently on 22.12.2014 also there was a No Work Day. Today also the adjournment is being sought on the ground that the transfer application has been filed whereas there is no stay and moreover judicial propriety also demands that the evidence should be recorded so that the witness need not come time and again; and if the

case is fixed for argument, the same may not be decided on account of pendency of transfer application. The mere pendency of transfer application does not amount to staying the recording of evidence unless there is any specific ground on that score also and the said application accompanied by affidavit to this effect, is filed before the Court in the absence of any stay order.

It is already 3:00 PM, but DW1 has not been cross-examined, as such the remaining cross-examination of DW1 is declared as Nil. Now the case is adjourned for remaining DWs for 20.01.2015 as last opportunity and it is made clear that no further opportunity shall be granted for the said purpose.”

Counsel for the petitioners has submitted that if one opportunity is granted, the petitioners would cross-examine DW1. It is also submitted that counsel for the petitioners Shri H.L. Sharma is an advocate of 75 years of age and because of his medical problems, he is attending the Courts only upto lunch and since the transfer application was pending, therefore, the request was made for adjournment which has not been granted.

After hearing learned counsel for the petitioners and examining the available record, I am of the considered opinion that there is no merit in his submissions and no interference is called for in the impugned order. The case was adjourned by the trial Court on 16.12.2014 to 22.12.2014 for

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cross-examination of DW1 in the morning sharp at 10:00 a.m. On 22.12.2014, since the Bar was observing “No Work Day”, therefore, the case was adjourned to 05.01.2015 for cross-examination of DW1 at 10:00 a.m. On 05.01.2015, the Clerk of Shri H.L. Sharma, Advocate appeared and submitted that the case may be adjourned as the transfer application is pending. The Court asked him as to whether there is any stay. It is recorded in the impugned order that the Clerk went away and at 12:30 p.m., a written request was made for adjournment on the ground that his transfer application is pending for 19.01.2015. The learned Court below recorded in its order that the case is more than 5 years old, is in Action Plan 2014 and the witness was waiting since morning who was to be cross-examined. It is also observed that learned counsel for the petitioners had submitted that he can cross-examine the witness up to 1:00 p.m. as he does not work after lunch.

Counsel for the petitioners has also admitted that no application was filed before the same Court for expunction of the observations made in paragraphs no.1 and 2 of the impugned order, therefore, in view of the judgment of the Supreme Court in the case of **State of Maharashtra v. Ramdas Shrinivas Nayak and another**, 1982 AIR (SC) 1249, there is no other alternative with the Court but to believe the record of the Court below from which I have found that there has been a concerted effort by the petitioners not to cross-examine the witness who had appeared as DW1 till 3.00 p.m. and at that time, the learned Court below declared the opportunity granted as “Nil”.

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In view of these facts and circumstances, there is hardly any error on the part of the learned Court below in passing the impugned order.

Resultantly, the present revision petition is hereby dismissed being denuded of any merit.

February 04, 2014
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(Rakesh Kumar Jain)
Judge