

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.238 of 2016
Date of Decision.15.01.2016

Balbir Singh

.....Petitioner

Vs.

Balwinder Singh and others

.....Respondents

Present: Mr. Rajinder Kumar Singla, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

1. The revision is against the dismissal of opportunity sought by the defendant to cross-examine the plaintiff by recalling him when his side has already been closed. It is the case of the defendant having been set ex parte in suit instituted in the year 2007. He had been living in foreign country and when he filed the application to set aside the ex parte order, the stage of the trial was that the plaintiff had already examined himself, closed his evidence and even the defendant's evidence had been let and closed. It was at the stage of rebuttal. When the trial Court was originally allowing the petition for setting aside the ex parte order, it did not give to him any liberty of filing the written statement but merely allowed him to participate at the trial at the stage at which ex parte order was set aside. This was brought in challenge before this Court in C.R. No.3563 of 2014 when this Court passed an order setting aside the order restricting the right to the defendant to merely

participate in the proceedings without even filing a written statement, had set aside the order and allowed the written statement to be filed and had stated that the defendant would also be at liberty to lead evidence. After this order was passed on 18.08.2015, the matter was brought for trial on 02.12.2015. The Court had recorded the fact that the defendant was not present and he had sought for adjournment. On the date when it was posted for adjournment for evidence of the defendant, the Court had also observed that the plaintiff will cross-examine first. On the subsequent date on 11.12.2015, there was no plaintiff's witness present and at request it was posted for evidence of the plaintiff. On 17.12.2015, the plaintiff objected to himself being examined or cross-examined by the defendant, for the High Court granted merely an opportunity to file written statement and produce his evidence and did not contemplate the plaintiff being recalled at a stage when the plaintiff's side had already been closed and even the defendant's side had been closed. According to the plaintiff, the Court's order must be construed only as allowing the benefit of evidence for the defendant to be given on the basis of the written statement filed and it did not contemplate reopening the case of the plaintiff and the evidence which he had already given. The Court accepted the objection.

2. I find the construction made to this Court's order by the court below was correct and there was no scope for allowing the defendant to have the benefit of recalling of the plaintiff for examination of all the plaintiff's witnesses. That permission has not been granted specifically in the order. The counsel says that such permission was not at least declined by the Court. From reading of the order, I do not find that it

was even contemplated that the plaintiff's side will be reopened and the defendant will have the benefit of cross-examination of all the witnesses of the plaintiff.

3. I will not make any interference with the order already passed. The civil revision is dismissed.

(K. KANNAN)
JUDGE

January 15, 2016
Pankaj*