

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.3130 of 2016

Date of Decision:4.5.2016

Surinder Singh Khanna

---Petitioner

vs.

Sardari Lal

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Ms. Munisha Gandhi, Senior Advocate
with Mr. Gourav Goel, Advocate
for the petitioner

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

Rekha Mittal, J.

The present petition has been directed against the order dated 5.4.2016 (Annexure P-1) passed by the Civil Judge (Junior Division), Rohtak, dismissing an application filed by the petitioner/defendant for recalling the orders dated 25.9.2015 (Annexure P-9) and 14.10.2015 (Annexure P-11) whereby the respondent/plaintiff has been given an opportunity to conclude his evidence.

Counsel for the petitioner has submitted that respondent Sardari Lal has filed a suit for declaration and partition by separate possession with consequential relief of permanent injunction. He filed a petition Civil

Revision No. 7468 of 2013 titled “Sardari Lal vs. Surinder Singh Khanna” and in the said case, notice of motion was issued vide order dated 6.12.2013 (Annexure P-7) after noticing in detail the contentions raised by counsel for the petitioner. It is further submitted that the aforesaid petition was allowed by this Court vide order dated 30.7.2015 (Annexure P-8). After decision dated 30.7.2015, the respondent/plaintiff filed an application dated 24.9.2015 (Annexure P-9) for summoning of witnesses and deposit of diet money for the said purpose which was allowed by the trial court vide order dated 25.9.2015 by way of endorsement on the application that reads “ Rs. 900/- be deposited at own responsibility”. On 14.10.2015, the respondent produced as many as six witnesses including the witnesses for whom the diet money was deposited vide order dated 25.9.2015. It is argued with vehemence that keeping in view the submissions made by counsel for the petitioner at the time of notice of motion coupled with the factum that there was no occasion for the respondent to file an application for summoning of witnesses or deposit of diet money, the learned trial court in place of confining examination of the witnesses in terms of order of notice of motion dated 6.12.2013, allowed the respondents to examine as many as six witnesses and also recorded certain observations against counsel for the petitioner before the trial court. It is vehemently argued that keeping in view scope of order passed by the Court, statements of the witnesses recorded on 14.10.2015 cannot be taken into consideration for disposal of the suit. In the alternative, it is submitted that in case examination of the witnesses recorded on 14.10.2015 is allowed to be taken into consideration, the petitioner may be allowed to cross examine the witnesses as a party

should not be allowed to suffer for any lapse on the part of his counsel.

I have heard counsel for the petitioner, perused the paper book and the various orders passed by this Court as well as the trial court.

In the order of notice of motion, certain contentions raised by counsel for the respondent/plaintiff were recorded. The Civil Revision No. 7468 of 2013 was eventually disposed of vide order dated 30.7.2015 (Annexure P-8). A relevant extract from the order, reads as follows:-

“.....In view of the submissions made by learned counsel for the petitioner, it would be just and expedient to grant one opportunity to the petitioner to enable him to conclude his evidence, so that the lis between the parties could be disposed of on merits. Moreover, the other side can be compensated with costs.

Accordingly, this petition is allowed. Trial Court is directed to grant one effective opportunity to the petitioner to enable him to conclude his evidence at his own risk and responsibility, subject to payment of Rs.10,000/- as costs. Costs be disbursed to the defendant. Thereafter, the trial Court shall proceed further with the case in accordance with law.”

A plain reading of the aforesaid extract leaves no manner of doubt that this Court while allowing petition of the respondent did not confine his right to examine a particular witness or a particular number of witnesses in pursuance of one effective opportunity allowed to the petitioner to conclude his evidence at his own risk and responsibility

subject to payment of Rs. 10,000/- as costs. Once the respondent was allowed one effective opportunity to conclude his evidence without imposing any condition qua the number of witnesses or names of witnesses, I find myself unable to accept submissions of the petitioner that either the respondent was not entitled to deposit diet money for summoning of witnesses or action of the trial court allowing the respondent to examine six witnesses present in the Court on the date fixed can be faulted with.

So far as contention of counsel in regard to observations made by the court qua conduct of counsel representing the petitioner before the trial court, I do not think that the Court has either made any unwarranted comments much less the same being liable to be set aside. The Court has only recorded conduct of counsel on the basis of what was observed by the Court during proceedings on 14.10.2015. The respondent offered to pay costs of Rs. 10,000/- to the petitioner but Sh. Attar Singh Panwar, Advocate appearing on behalf of Sh. Raj Malik, Advocate counsel for the defendant refused to accept costs as well as examine the witnesses present in the court. It further appears that as the petitioner or for that matter his counsel was not happy with the presence of six witnesses and their examination by availing of one effective opportunity allowed by this Court, there was an attitude of avoidance to cross examine the witnesses. Nevertheless, a party may not be allowed to suffer for some remiss on the part of his counsel. In case the petitioner is not permitted to cross examine the witnesses examined by respondent/plaintiff on 14.10.2015, it may be of serious consequence for him. That being so, the petitioner is permitted to cross examine the witnesses examined on 14.10.2015 subject, however, to deposit of Rs.

10,000/- as costs in the name of the respondent/plaintiff which shall be released in his favour as per rules. The costs shall be deposited by the petitioner well in advance before the date fixed by the trial court for cross examination of the witnesses. The petitioner shall not be entitled to seek adjournment for cross examination of the witness(s) present in the Court whose examination in chief was recorded on 14.10.2015.

In view of what has been discussed hereinabove, the petition stands disposed of in the aforesaid terms.

Before parting with the order, it is clarified that the petition has been disposed of without notice to the respondent in order to avoid inconvenience and incurring expenditure by the respondent. However, if the respondent has any grievance to express, he shall be at liberty to file an appropriate application before this Court.

(Rekha Mittal)
Judge

4.5.2016
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