

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.5220 of 2016
Date of Decision: 20.10.2016

Krishan Kumar

.....Petitioner

Vs

Smt. Ram Devi Kataria @ Bachi Devi Kataria and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Mohit Sadana, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner is aggrieved of the order dated 15.07.2016 (Annexure P-1) passed by Additional District Judge, Sangrur whereby application dated 05.11.2015 filed by him under Section 151 CPC for getting himself cross-examined in civil appeal was dismissed.

[2]. Petitioner alleged that his evidence was closed by his counsel, inadvertently and plaintiff/petitioner omitted to produce himself for cross-examination at the hands of the defendants.

[3]. Learned counsel for the petitioner contended that the statement of the plaintiff was recorded on 10.06.2010, but his

cross-examination was deferred at the request of learned counsel for the defendants. Thereafter, learned counsel for the defendants did not cross-examine the plaintiff, despite the fact that the plaintiff kept on appearing on each and every date of hearing. Defendants never requested for production of the plaintiff for his cross-examination. Inadvertently, the evidence of the plaintiff was closed. Plaintiff himself could not get his cross-examination conducted before the trial Court despite due diligence. The suit was ultimately dismissed.

[4]. During pendency of appeal, at the time of preparation of arguments, the factum of non-cross-examination of the plaintiff came to fore, therefore, application came to be filed at the appellate stage for seeking cross-examination of the plaintiff at the hands of the defendants.

[5]. From the record, I found that the issues were framed in the suit on 07.04.2008. Thereafter, the case remained pending for evidence of the plaintiff till 21.09.2011. The statement of the plaintiff was recorded on 11.06.2010 and his cross-examination was deferred on the said date. Thereafter plaintiff did not appear for his cross-examination and his evidence was closed on 21.09.2011 by his counsel.

[6]. Various interim orders passed by the trial Court during

intervening period revealed that the plaintiff was not present before the Court, therefore, assertion of the plaintiff that he remained present on each and every date could not be proved. The case remained pending for rebuttal evidence from 20.12.2012 till the date, when the suit was decided by the trial Court on 03.09.2013. Even during this intervening period, the plaintiff filed application for additional evidence, but surprisingly, the factum of non-cross-examination of the plaintiff was not brought to the notice of the Court, nor any application was filed by the plaintiff for recalling him as a witness for cross-examination by the defendants. Even the appeal was pending before the lower Appellate Court since 17.09.2013.

[7]. The alleged discovery of fact came to be noticed by the plaintiff/appellant only at the time of preparation of the appeal. By virtue of such a prayer, the petitioner intended to dislodge the judgment and decree of the trial Court. The acceptance of such prayer would amount to *de novo* trial before the trial Court. Even in the absence of lawful challenge having been made by the petitioner and decided by the lower Appellate Court, the judgment and decree passed by the trial Court cannot be nullified simply by remanding the case for cross-examination of the plaintiff, who remained passive throughout despite knowledge.

[8]. In view of aforesaid, no indulgence can be granted under extra ordinary supervisory jurisdiction of this Court under Article 227 of the Constitution of India. This revision petition is accordingly dismissed.

October 20, 2016
Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned Yes / No

Whether reportable Yes / No