

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

**CR No.5392 of 2016 (O&M)
Decided on.05.09.2016.**

Cantonment Board, Ferozepur Cantt.

.....Petitioner

Versus

Punjab State Power Corporation Limited and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Sandeep Khunger, Advocate
for the petitioner.

Mr. Y.P.Khullar, Advocate
for respondents.

DARSHAN SINGH, J. (Oral)

The present revision petition has been preferred against the order dated 04.07.2016 passed by the learned Civil Judge (Jr. Division), Ferozepur, vide which the evidence of the petitioner-plaintiff has been closed by order.

2. Learned counsel for the petitioner contended that the petitioner-plaintiff has already examined Satish Kumar, Sub-Divisional Engineer as PW-2, who has tendered his affidavit on 04.04.2016 and case was adjourned to 04.05.2016 for his cross-examination. Even his part cross-examination was conducted on 24.06.2016. He could not appear on 04.07.2016 as he was unwell and was taken to General Hospital. The doctor has advised him complete rest. But, the learned trial Court has closed the evidence of the petitioner-plaintiff. Learned

counsel for the petitioner contended that one opportunity may be given to the petitioner to produce PW-2 Satish Kumar to face the remaining cross-examination, otherwise the plaintiff-petitioner will suffer irreparable loss as his statement will not be taken into consideration.

3. On the other hand, Mr. Y.P.Khuller, Advocate, learned counsel for the respondents contended that sufficient opportunities were granted to the petitioner-plaintiff to produce their witnesses. But, when they failed to produce their witnesses, its evidence was closed by the learned trial Court vide impugned order dated 04.07.2016. Thus, he pleaded that no case is made out for granting any opportunity to the petitioner to produce PW-2 to face the cross-examination.

4. I have duly considered the aforesaid contentions.

5. It is an admitted fact that the petitioners have produced PW-2 Satish Kumar, Sub Divisional Engineer in the witness box on 04.04.2016. He has tendered his affidavit in his examination in chief. On the request made by learned counsel for the respondents-defendants, the cross-examination was deferred and case was adjourned to 04.05.2016 for his cross-examination. On 04.05.2016, he was not present and the case was adjourned to 24.05.2016. On 24.05.2016, PW-2 Satish Kumar was present and was partly cross-examined. His further cross-examination was deferred for want of record and case was adjourned to 04.07.2016 when the impugned order was passed closing the evidence of the petitioner-plaintiff.

6. On 04.07.2016, PW-2 Satish Kumar has fallen down from his motorcycle as he is a diabetic and has to be taken to General Hospital, Ferozepur Cantt for treatment. Doctor has advised him rest.

Learned counsel for the petitioner has drawn my attention to the certificate issued by the Medical Officer Incharge, Cantonment General Hospital, Ferozepur Cantt (Annexure P-2), which shows that on 04.07.2016 PW-2 Satish Kumar was under treatment due to some injury and he was advised complete bed rest for three days w.e.f 04.07.2016 to 06.07.2016. Thus, there was sufficient cause for non appearance of PW-2 Satish Kumar to face the remaining cross-examination on 04.07.2016. But, at the same time, there was no justification for his non appearance on 04.05.2016 and for the inconvenience caused to the respondents, they can be well compensated by way of costs.

7. Thus, keeping in view of my aforesaid discussion, the present revision petition is hereby allowed. The impugned order dated 04.07.2016 passed by the learned trial Court is hereby set aside. The learned trial Court is directed to afford one effective opportunity to the petitioner to produce PW-2 Satish Kumar to face the remaining cross-examination subject to Rs. 5000/- as costs. PW-2 Satish Kumar shall be produced by the petitioner at their own responsibility on the next date of hearing to be fixed by the learned trial Court.

(DARSHAN SINGH)
JUDGE

05.09.2016

S.khan

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No