

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

CR No.5688 of 2016(O&M)

Date of decision:19.9.2016

Mahant Purna Nand Sarswati

....Petitioner

VERSUS

General Public and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Malkeet Singh, Advocate for the petitioner.

REKHA MITTAL, J. (Oral)

The present petition has been directed against order dated 05.08.2016 passed by the Additional Civil Judge (Senior Division), Kapurthala whereby application filed by the petitioner under Order 18 Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 (in short 'CPC') for allowing cross examination of witnesses namely Mahant Purna Nand Sarswati (PW-1) and Joginder Singh (PW-2) has been dismissed.

Counsel for the petitioner would contend that in the proceedings initiated under Section 372 of the Indian Succession Act, 1925 titled Parkasha Nand Vs. General Public, no one appeared to contest the proceedings despite publication of notice in 'The Tribune' Jalandhar edition. On 29.01.2011, Mahant Purna Nand Saraswati and Joginder Singh PWs were examined ex parte. Later, an application was filed on behalf of Swami Maheshwara Nand for setting aside ex parte proceedings that was allowed by the Court. Maheshwara Nand submitted his objections to

which response was filed by the petitioner. Due to some inadvertent mistake, counsel for the petitioner closed the evidence after tendering documents vide order dated 05.11.2015 without realizing that the witnesses already examined needs to step into the witness box for their cross examination by the objector. It is further submitted that a serious prejudice is likely to be caused to the petitioner in case the witnesses already examined by the petitioner are not permitted to be cross examined by the contesting party because in that eventuality, evidence of the witnesses may not be considered for the purpose of disposal of petition on merits. It is further submitted that the petitioner may be provided one opportunity to tender Mahant Purna Nand Saraswati and Joginder Singh in the witness box for their cross examination by the contesting party and thereafter, the respondent may be allowed another opportunity to rebut the evidence led by the petitioner.

I have heard counsel for the petitioner, perused the paper-book particularly the order impugned.

The trial Court dismissed the application by passing a cryptic order without adverting to the facts obtaining in the case. A relevant extract from the impugned order reads as follows:-

“3....I am of the considered view that after closing of evidence by plaintiff and defendant now evidence cannot be reopened at the stage of arguments. So, I hereby dismiss this application....”

The Court below has failed to appreciate that as the petitioner had already examined two witnesses before ex parte proceedings were set aside on the application filed by the contesting party, the other party should have been called upon to cross examine the witnesses or there should have been examination afresh of the witnesses. In case the witnesses are not

cross-examined, their statements may not be read into evidence, causing serious prejudice and consequence for the petitioner, owing to failure of his counsel to take care at an appropriate stage of the proceedings. The rules of procedure are handmaid of administration of justice and the same are to be applied to enhance its cause and not to scuttle the same.

In the given facts and circumstances, the order impugned cannot be allowed to sustain and accordingly set aside. The petitioner is provided with one opportunity to tender Mahant Purna Nand Saraswati PW1 and Joginder Singh PW2 for their examination and cross examination and thereafter, the respondent would be entitled to an opportunity to rebut the evidence adduced by the petitioner.

For the foregoing reasons, the petition is allowed in the aforesaid terms.

Before parting with this order, it is clarified that the petition has been disposed of without notice to the respondent in order to save him from unnecessary expense and inconvenience. However, the respondent would be at liberty to file an appropriate application in case he has any grievance to express.

SEPTEMBER 19, 2016

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no