

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

**CR No.5716 of 2016 (O&M)
Decided on: 02.09.2016**

Balkar Singh

....Petitioner

Versus

Nirmal Singh and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Rajeev K. Kapila, Advocate
for the petitioner.

REKHA MITTAL, J. (Oral)

The present petition has been directed against orders dated 21.07.2016 (Annexure P-3) and dated 10.08.2016 (Annexure P-5) whereby cross-examination of the witnesses Ujjal Singh – PW1, Nirmal Singh – PW2 and Santokh Singh – PW4 has been treated as NIL and application filed by the petitioner for recalling/review of the order dated 21.07.2016 has been dismissed, respectively.

Counsel for the petitioner has submitted that in the application filed by the petitioner for recalling/review of the order dated 21.07.2016, specific allegations were raised that counsel for the petitioner was present before the trial Court and expressed his willingness to cross-examine the witnesses but as counsel opposite was not present, cross-examination could not be started. In the afternoon session, when the case was called, the petitioner went to call his counsel and thereafter when he appeared in the Court, he came to know that the cross-examination has been treated as NIL.

The respondents/plaintiffs did not file any response to the

application and even the trial Court in the order dated 10.08.2016 has not made any observation with regard to correctness or otherwise of the facts detailed in para 2 and 3 of the application for recalling/review of the order dated 21.07.2016. It is further argued that a serious prejudice is likely to be caused to the petitioner in case he is not permitted to cross-examine the three witnesses whose cross-examination has been treated as NIL.

I have heard counsel for the petitioner and perused the paperbook particularly the orders impugned.

In the order dated 21.07.2016, the trial Court has recorded presence of counsel for the defendant/petitioner but the said order also makes reference that cross-examination has been treated as NIL after giving opportunity. The petitioner filed application for recall/review of order dated 21.07.2016 by raising detailed allegations set up in paras 2 and 3 of the application (Annexure P-4). Perusal of the impugned order (Annexure P-5) would indicate that the respondents/plaintiffs did not file any response to the application to controvert the allegations. The trial Court while disposing of the application vide order dated 10.08.2016 has not adverted to the contentions of the petitioner raised in paras 2 and 3 of the application despite the fact that the opposite party did not file any response thereto. The trial Court merely made reference to the earlier order dated 23.12.2012 and 26.05.2016 but did not say that the allegations raised in paras 2 and 3 of the application are incorrect much less *mala fide*.

Keeping in view the serious consequences likely to ensue on account of failure of the petitioner to cross-examine the witnesses

PW1, PW2 and PW4 coupled with the principles of natural justice, the petitioner is provided one opportunity to cross-examine the witnesses subject to payment of costs of Rs.5,000/- to each of the witnesses which would be deposited in the trial Court and paid to the witnesses after their cross-examination. The petitioner would not seek any adjournment for cross-examination of the aforesaid witnesses on the day they appear in the Court for the purpose.

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

02.09.2016
yakub

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No