

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.6158 of 2016

Date of Decision: September 19th, 2016

Smt.Poonam

...Petitioner

Versus

Pawan Kumar & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Vivek K. Thakur, Advocate,
for the petitioner.

AMIT RAWAL, J. (Oral)

Petitioner-defendant No.1 is aggrieved of the impugned orders dated 27.5.2016 (Annexure P-4) and 31.8.2016 (Annexure P-7).

Mr.Vivek K.Thakur, learned counsel for petitioner-defendant No.1 submits that the respondent-plaintiff had filed a suit for possession by way of specific performance of the agreement to sell dated 16.1.2012. The petitioner had put in appearance and had been contesting the suit. On 14.10.2015, respondent-plaintiff had examined two witnesses, namely, Pawan Kumar (plaintiff) and Sandeep Kumar attesting witness of the agreement to sell. However, on the said date, the petitioner-defendant was proceeded *ex-parte* as she had wrongly noted the date as 2.12.2015. On acquiring the knowledge, application dated 15.12.2015 was moved and the same has been allowed vide order dated 27.5.2016 (Annexure P-4), whereby the petitioner-defendant has been allowed to join the proceedings from the date the suit was slated for. The Court did not realise the fact that by that

time, two witnesses had been examined and in the absence of the cross-examination, defence of the petitioner has seriously been affected and in this backdrop of the matter, application for recalling of the order was moved, which has been declined vide order dated 31.8.2016 (Annexure P-7). He submits that both the orders, Annexures P-4 and P-7, are under challenge.

I have heard the learned counsel for the petitioner-defendant and appraised the paper book.

The order allowing the petitioner to join the proceedings and not cross-examine the witnesses is not a reasonable one. The petitioner was not instrumental in delaying the decision of the suit and the dates indicated above reveal that the application for setting-aside of the *ex-parte* proceedings was moved with promptitude. The Court could have imposed certain other conditions like costs but not in taking away the right of cross-examination of the witnesses. Even this fact was sought to be rectified, but the same has also been declined. I am of the view that the petitioner-defendant cannot be denied right to cross-examine the witnesses once she has been allowed to join the proceedings as it amounts to miscarriage of justice.

In order to prevent the miscarriage of justice and do justice, I set-aside both the orders under challenge and allow the petitioner-defendant to cross-examine the aforementioned witnesses on the date next, i.e., 21.9.2016 fixed before the trial Court. I refrain myself from issuing notice to the respondents in order to prevent the prolongation of adjudication of the suit, much less defray litigation charges. However, this order shall be subject to payment of ₹5,000/- as costs, which shall be a condition

precedent.

Copy of this order be given *dasti* to the learned counsel for the petitioner under the signatures of Reader of this Court.

Civil Revision Petition stands allowed.

September 19th , 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No