

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.6354 of 2016 (O&M)
Date of Decision.26.09.2016

Balwinder Singh and another

.....Petitioners

Vs.

Dharminder Singh and others

.....Respondents

Present: Mr. Daljit Paul Singh, Advocate
for the petitioners.

Mr. M.S. Talwar, Advocate
for the respondents.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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AMIT RAWAL J. (ORAL)

Notice of motion.

Mr. M.S. Talwar, Advocate accepts notice for the respondents.

The petitioner-plaintiff is aggrieved of the impugned order (Annexure P-1) whereby the application moved under Section 151 CPC for directing the defendants to conclude the cross examination of PW6 Sukhdev Ram son of Bhawan Dass, has been dismissed.

Mr. Daljit Paul Singh, learned counsel for the petitioners submits that the petitioners had filed the suit for specific performance of agreement to sell but the same was dismissed by the trial Court vide judgment and decree dated 24.12.2011. First appeal filed thereafter was allowed by the lower Appellate Court vide judgment and decree dated 17.04.2015 directing the trial Court to allow PW7 and PW8 for cross-examination subject to costs of ₹10,000/-.

However, before the decision of the suit by the trial Court, one

PW6 Sukhdev Ram had tendered his affidavit on 25.11.2010 but his cross-examination was deferred as he was directed to produce copy of some record for 13.12.2010. On 13.12.2010, the Presiding Officer was not holding court and taken up the matter on 23.12.2010. After 23.12.2010, the matter was taken up on 19.01.2011. On 19.01.2011, he was present but the defendant did not examine and requested for date and PW6 was bound down for 20.01.2011. On 20.01.2011, cross-examination of PW5 had been completed but no other PW was present and the matter was adjourned to 03.02.2011 for remaining evidence. On 03.02.2011, no PW was present and the matter was adjourned to 10.02.2011. On 10.02.2011 again no PW was present and the matter was adjourned to 16.02.2011. On 16.02.2011 also no PW was present and the matter was adjourned to 23.02.2011 and ultimately, the suit came to be decided. Since the cross-examination of the aforementioned witness has not been treated 'nil', the same would not be looked into and in this backdrop of the matter, the application was filed.

He further submits that once PW6 was bound down, the Court should proceed under Order 16 Rule 12 CPC, thus, urges this Court for setting aside the order under challenge.

Mr. M.S. Talwar, learned counsel appearing for the respondents submits that the order of the lower Appellate Court confined to examination of PW7 and PW8 and therefore, the petitioners cannot be allowed to do the thing which was not permitted. The application was wholly debarred, rightly so, has been dismissed by the Court below. No fault can be attributed to the defendants, thus, urges this Court for dismissal of the revision petition.

I have heard learned counsel for the parties and appraised the paper book. The order dated 25.11.2010 whereby the PW6 was cross-

examined reads thus:-

“One PW partly cross examined and his further cross examination deferred for want of record. The present PW is bound down for 13.12.2010. Remaining PWs be also produced on the said date. A separate letter be issued for extension of time.”

When the matter was again taken up, the aforementioned witness was bound down for 20.01.2011 and thereafter, he does not come. The petitioner's apprehension, in my view, is that as his cross-examination has not been held to be 'nil', therefore, his statement could not be looked into. The fault cannot be attributed to the petitioner-plaintiff. In my view, it was the duty of the trial Court to invoke the provisions of Order 16 Rule 12 CPC as a witness was bound down. It was not within the control of the petitioner-plaintiff. This aspect has not been taken into consideration by the trial Court and therefore, in my view, the application was required to be allowed even if the direction of the lower Appellate Court was confined to PW7 and PW8, as the aforementioned fact was to be confirmed by the trial Court. Since the judgment and decree of the trial Court has been set aside and the matter has been remanded back, therefore, opportunity should be given to the petitioner to prove his case.

For the foregoing reasons, the impugned order is set aside and the application is allowed. PW6 is permitted to be cross-examined by the defendants. The revision petition stands allowed.

(AMIT RAWAL)
JUDGE

September 26, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No