

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

-.-

CR 7024 of 2016
Date of decision: 03.11.2016

Tarsem Lal and another

..... Petitioners

Versus

Parkash Chand and others

..... Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Narender Kaajla, Advocate for
Mr. Dinesh Mahajan, Advocate
for the petitioners

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Rekha Mittal, J. (Oral)

The present petition has been directed against orders dated 05.08.2016 (Annexure P2) and dated 30.09.2016 (Annexure P6) whereby cross examination of Parkash Chand-respondent/plaintiff was treated as 'nil' and application for recalling Parkash Chand for his cross examination has been dismissed.

Counsel for the petitioners would contend that on 05.08.2016, Shri Vishesh Kumar, Advocate representing the petitioners before the trial Court was not available at Gurdaspur as he had gone to attend Court proceedings at Batala in case *Mahood Ahmed v. Smt. Amtula Hafeez* and cross examined two witnesses examined by the plaintiff namely Sukhdev Singh (PW5) and Mehmood Ahmad (PW6). It is further submitted that factum of counsel for the petitioner being not available at Gurdaspur on 05.08.2016 is duly acknowledged in order dated 30.09.2016, sufficient to

show that presence of Shri Vishesh Kumar, Advocate in order dated 05.08.2016 was wrongly recorded by the trial Court. It is argued that as Parkash Chand is the main witness in the case being the plaintiff, a serious prejudice would be caused to the petitioners in case they are not permitted to cross examine him. Further argued that the petitioners may be put to terms and conditions sufficient to compensate the other side for any lapse on their part.

I have heard counsel for the petitioners, perused the paper book particularly the order impugned and order dated 05.08.2016 passed in Civil suit titled Mahmood Ahmad v. Amtul Hafeez and examination of two witnesses in the said case placed on record.

Perusal of Annexure P2 would make it evident that the trial Court recorded presence of Shri Vishesh Kumar, Advocate on behalf of defendants No. 3 and 4 (petitioners herein) and treated cross examination of Parkash Chand (PW1)-plaintiff as 'nil' by recording 'opportunity given'. The presence of counsel of the petitioners recorded on 05.08.2016 is clearly contrary to factual position borne out from order dated 30.09.2016 as well as the documents pertaining to case titled *Mahmood Ahmad v. Amtul Hafeez*. That being so, the proceedings conducted by the trial Court treating cross examination of witness as 'nil' by recording presence of counsel for the petitioners despite his absence cannot be allowed to sustain and liable to be set aside. This apart, as Parkash Chand is a material witness being the plaintiff in the case and a serious prejudice is likely to ensue in case the petitioners are not permitted to cross examine him, the petitioners are provided with one opportunity to cross examine Parkash Chand (PW1) subject to payment of Rs.10,000.00 as costs, to be deposited with the trial

Court well before date to be fixed for cross examination of Parkash Chand. The petitioners shall ensure that cross examination of Parkash Chand is complete on the date he tenders himself in witness box, without any default. Failure of the petitioners to comply with the directions of this Court would entail dismissal of the petition. The costs shall be released in favour of the respondent/plaintiff, as per rules.

Before parting with the order, it is clarified that the instant petition has been disposed of without notice to the respondent/plaintiff in order to avoid inconvenience and incurring expenditure by him. However, if the respondent/plaintiff has any grievance to express, he shall be at liberty to file an appropriate application before this Court.

(Rekha Mittal)
Judge

03.11.2016
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No