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

CR-8148-2016

Date of decision : 03.12.2016

Suba Singh

... Petitioner

Versus

Ajit Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.S. Antal, Advocate and
Mr. A.P.S. Kahlon, Advocate
for the petitioner.

AMIT RAWAL, J. (ORAL)

The petitioner-defendant No.2 is aggrieved of the impugned order dated 25.10.2016 (Annexure P-6), whereby the application seeking permission to cross-examine the respondent No.1/plaintiff, namely, Ajit Singh, has been dismissed on the premise that the application was not moved by defendant No.2, but signed and moved by the counsel,

Mr. S.S. Antal and Mr. A.P.S. Kahlon, learned counsel appearing on behalf of the petitioner-defendant has drawn the attention of this Court to the provisions of Order 3 Rule 1 of the Code of Civil Procedure.

He further submits that the power of attorney contained all the powers to the counsel to do such acts, but the Court had remained oblivious of the aforementioned provisions, thus, impugned order under challenge is not sustainable and prays for setting aside the same.

I have heard the learned counsel for the petitioner-defendant and appraised the paper book and of the view that there is a force and merit

in the submissions of Mr. S.S. Antal.

It would be apt to reproduce the provisions of Order 3 Rule 1 of the Code of Civil Procedure which reads thus:-

“1. Appearances, etc., may be In person, by recognized agent or by pleader.- Any appearance, application or act in or to any court, required or authorised by law to be made or done by a party in such court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader appearing, applying or acting, as the case may be, on his behalf:

Provided that any such appearance shall, if the court so directs, be made by the party in person.”

In view of the such provisions, the counsel has power to move an application in the absence of the affidavit or signatures of defendant No.2, thus, the order of the Court below is not sustainable being devoid of merits.

For the foregoing reasons, the impugned order dated 25.10.2016 is hereby set aside and the application of the petitioner-defendant No.2 for cross-examination of respondent No.1/plaintiff, namely, Ajit Singh is allowed.

The petitioner-defendant No.2 will not, under the garb of this Order, delay the adjudication of the trial in seeking unwanted adjournments.

03.12.2016

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**