

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 963 of 2015

Date of Decision: 17.05.2016

Veer Singh (deceased) through his Legal Representative
... Petitioner(s)

Versus

Harbans Kaur and Others
... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

- | | | |
|----|---|------------|
| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. Manpreet Singh Sidhu, Advocate
for the petitioner(s).

Shekher Dhawan, J.

Present petition under Article 227 of the Constitution of India for setting aside order dated 2.12.2014, passed by learned Civil Judge (Junior Division), Budhlada, District Mansa, whereby application moved by the petitioner/plaintiff to summon Mela Singh for further cross-examination, was dismissed and evidence of the petitioner was closed by court order.

Learned counsel for the petitioner submitted that after settlement of the issues, petitioner had put in his sincere efforts to conclude the evidence and for that purpose, he had been producing the

witnesses on each and every date for recording of their statements. But at the instance of respondents' counsel, cross-examination of the plaintiffs' witnesses was not completed and resultantly case had to be adjourned. On 27.11.2014 also PW Mela Singh was present but he could not be examined. Subsequently, he turned hostile and petitioner had moved an application for summoning the said witness Mela Singh through Court. But that request was declined and the evidence of petitioner was closed by order.

Learned counsel for the respondents submitted that petitioners had availed more than reasonable opportunities to conclude evidence which included last opportunity, declared by the Court for that purpose and in those compelling circumstances, the Court below passed order dated 2.12.2014, thereby closing the evidence of plaintiff by court order.

Having considered the submissions made by learned counsel for the parties and appraisal of the record of the case, this Court is of the considered view that certain dates and events are relevant for the purpose of decision of the case because issues in this case, issues were framed on 25.1.2014 and the case was practically taken up for the plaintiff's evidence for the first time on 29.4.2014. On that date, no witness of the plaintiff was present and the case was adjourned to 7.7.2014 for his evidence, subject to payment of costs of ₹ 200/-. On adjourned date i.e. 7.7.2014, no witness of the plaintiff was present and an application was filed for restoration of application for setting aside *ex parte* proceedings against defendant No.1 and on

21.7.2014, application was allowed and thereafter the case was taken up for plaintiff's evidence on the basis of amended pleadings on 16.9.2014. On that date, one witness, namely Navdeep Singh was present and his examination-in-chief was recorded by way of affidavit and his cross-examination was deferred on the request of the defendants' counsel and the case was posted for 7.10.2014. On 7.10.2014, Tarsem Lal Mittal, Deed Writer was present. PW Navdeep Singh was also present. Their statements could not be completed and the case was adjourned to 21.10.2014 and on 21.10.2014 again cross-examination of the witnesses was deferred on the request of counsel for defendant No.2 and witnesses were bound down for 15.11.2014. On 15.11.2014, cross-examination of PW Navdeep Singh was completed and cross-examination of PW Tarsem Lal Mittal was again deferred for 27.11.2014 on the request of learned counsel for defendant No.2. On that day, Mela Singh witness was not present. But cross-examination of PW Tarsem Lal Mittal, Deed Writer, was completed and case was adjourned to 2.12.2014 for recording of his statement with the direction that next date would be the last opportunity.

On 2.12.2014, plaintiff failed to produce any witness including Mela Singh and took the plea that respondent party had taken away Mela Singh and he could not be produced and he be summoned through Court and the Court passed the order thereby closing plaintiff's evidence and declining the request of petitioner to summon PW Mela Singh for his cross-examination.

The above sequence of events reveals that case was fixed

for plaintiff's evidence on certain dates but at the same time petitioners had been making sincere efforts to conclude their evidence and produce the witnesses for that purpose. The witnesses had to be sent back unexamined for the purpose of their cross-examination at the request of respondents' counsel. Even PW Mela Singh was examined on 21.10.2014 and thereafter he failed to put in appearance. A plea has been taken by plaintiff's counsel that the said witness has turned hostile and in those circumstances, plaintiff was left with no option but to seek permission of the Court to cross-examine him. In these circumstances, it was duty of the Court to compel presence of PW Mela Singh. There was no question of deposit of process fee and diet money for summoning the witnesses at the initial stage because plaintiff had been able to produce the said witness but thereafter for the reasons best known to Mela Singh, he remained away from the Court. It was essential that such a witness must come present in the Court for the purpose of his cross-examination and the petitioner was not to be penalized by passing the impugned order, thereby closing his evidence by court order. Petitioner had already put in all the best efforts to lead the evidence but the case was being adjourned on the request of respondents' counsel.

In view of above, present petition is accepted and impugned order dated 2.12.2014 is hereby set aside. The Court below is directed to issue summons to PW Mela Singh for completing his cross-examination and for that purpose petitioner shall take dasti notice on deposit of process fee and diet money with the Court below. It is also

made clear that in case Mela Singh failed to put in appearance despite service of summons, the Court below shall compel his presence as per provisions of the Code of Civil Procedure. For that purpose, petitioner shall be given one effective opportunity.

(Shekher Dhawan)
Judge

May 17, 2016
"DK"