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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.1035 of 2017

Date of Decision : 18.09.2017

NATHI

...PETITIONER

VERSUS

RAJBALA AND OTHERS

....RESPONDENTS

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. B.S. Tewatia, Advocate for the petitioner.
Mr. Jai Bhagwan Sharma, Advocate for respondent No.1.
Mr. Ashwani Gaur, Advocate for respondents No.2 to 4.

RAMESHWAR SINGH MALIK, JUDGE (ORAL)

Present revision petition under Article 227 of the Constitution of India, at the hands of defendant No.3, is directed against the order dated 02.02.2017 passed by learned trial Court, whereby his application for additional evidence was dismissed.

Notice of motion was issued and the learned trial Court was directed to adjourn the case beyond the date fixed by this Court.

Heard learned counsel for the parties.

The case set up by the petitioner-defendant No.3 before the learned trial Court, while moving his application for additional evidence was that he was suffering from *Chikungunya* and was undergoing medical treatment. The only evidence which the petitioner was seeking to lead by way of an additional evidence was his own cross-examination. Under these circumstances, the learned trial Court ought to have allowed the application of the petitioner, avoiding technicalities. However, since the learned trial

Court proceeded on too technical approach, a serious prejudice has been caused to the petitioner. Having said that, this Court feels no hesitation to conclude that since the impugned order has been found suffering from patent illegality, it cannot be sustained and the petitioner deserves to be granted one more opportunity for his own cross-examination.

Learned counsel for the respondents could not raise any argument in support of the impugned order and rightly so, it being a matter of record. It goes without saying that the rules of procedure are handmade of justice. Petitioner ought to have been granted one more opportunity by the learned trial Court.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noticed above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order has been found suffering from patent illegality, it cannot be sustained.

Accordingly, the order dated 02.02.2017 passed by the learned trial Court is hereby set aside. Learned trial Court is directed to grant one more opportunity to the petitioner to present himself for his own cross-examination. Thereafter, the learned trial Court shall proceed further and decide the suit in accordance with law.

With the abovesaid observations made and directions issued, the instant revision petition stands allowed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

September 18, 2017

rajneesh

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No