

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

CR No.1134 of 2017

Date of decision: 8th August, 2017

Charanjeet Kaur

... Petitioner

Versus

Gopi Chand and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Jaswinder S. Grewal, Advocate for the petitioner.

None for the respondent.

RAMESHWAR SINGH MALIK, J. (ORAL)

Present civil revision petition, at the hands of defendant, filed under Article 227 of the Constitution of India, is directed against order dated 16.01.2017 (Annexure P7) whereby evidence of the defendant was closed.

Notice of motion was issued and in the meantime, learned trial Court was directed to adjourn the case beyond the date fixed before this Court.

Service of the respondents was complete on the last date of hearing, i.e. 26.04.2017, however, when none put in appearance on behalf of the respondents to oppose the present civil revision petition, another opportunity was granted to them, adjourning the case for today.

Similar is the position today, neither any counsel is present nor any request for pass-over has been made on behalf of the respondents.

Heard learned counsel for the petitioner.

Learned counsel for the petitioner has placed reliance on (Annexure P5) whereby the defendant-petitioner has deposited the requisite amount for diet money of the summoned witnesses and other expenses. It is also not in dispute that both the left-over witnesses of the petitioner-defendant were official witnesses. In this view of the matter, it was not within the control of the petitioner to ensure presence of the official witnesses. Since the learned trial Court failed to appreciate this factual and material aspect of the matter before passing the impugned order, it is a patent illegality and the impugned order cannot be sustained.

Whatever was within the control of the petitioner, she has done that by depositing the requisite amount on account of process fee and diet money etc. Thereafter, it was for the learned trial Court to ensure the presence of the official witnesses. However, no such effort was made and evidence of the petitioner was closed by impugned order which has been found to be an order without jurisdiction, in the given circumstances of the case in hand, referred to hereinabove. Thus, the impugned order cannot be sustained for this reason also.

It goes without saying that rules of procedure are meant for advancing the cause of justice. Every Court of law must make an endeavour to grant reasonable and sufficient opportunities to both the parties to put in their best case before the Court. Nobody should be forced to go home with the grievance that reasonable opportunity was not granted

by the learned Court. Since learned trial Court failed to appreciate the abovesaid factual as well as legal aspect of the matter before passing the impugned order, it has resulted in causing serious prejudice to the petitioner and the same cannot be sustained, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, since the impugned order has been found suffering from patent illegality and perversity, it cannot be sustained. Accordingly, the impugned order dated 16.01.2017 (Annexure P7) passed by the trial Court is hereby set aside. The learned trial Court is directed to grant another opportunity to the petitioner to produce her remaining evidence. The trial Court shall also ensure the presence of the official witnesses by taking appropriate steps. Thereafter, the trial Court shall proceed further with the case to decide it, in accordance with law.

Resultantly, with the above said observations made and directions issued, the present revision petition stands allowed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

August 8, 2017
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No