

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

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**Civil Revision No.1179 of 2017(O & M)
Date of Decision:17.02.2017**

Satnam Singh

....petitioner

Versus

Harpal Singh and others

.....respondents

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

Present: Mr.Sherry K.Singla, Advocate
for the petitioner

ARUN PALLI, J. (ORAL):

Vide order, being assailed, dated 27.01.2017, rendered by the Civil Judge (Sr.Divn.), Patiala, the trial Court has granted opportunity to the plaintiff-respondent No.1 to appear for further cross-examination.

In a suit filed by the plaintiff-respondent No.1, he has prayed for a declaration that he is owner to the extent of 1/5th share in the estate of his father namely Maghar Singh, and, has also assailed the Will dated 22.07.2004, which is alleged to have executed by the deceased in favour of the petitioner (defendant No.1) and his brother Kesar Singh (defendant No.2). No doubt, the plaintiff-respondent No.1 had already led his evidence, and, thereafter, even the defendants have also closed their evidence. But owing to inadvertence and an accidental omission, the plaintiff-respondent No.1 closed his evidence, though, he was only partly cross-examined. Thus, an application was moved for recalling the plaintiff-respondent No.1 Harpal Singh, for further cross examination.

And, on an analysis of the matter and the material on record, learned trial Court reached a conclusion that in the event, the opportunity

prayed for, is not granted, that would result in injustice to the plaintiff;

The counsel for plaintiff/applicant has argued that the cross examination of the plaintiff Harpal Singh is essential as the plaintiff will not be able to prove his case otherwise. That due to inadvertence the plaintiff evidence was closed despite the fact that Harpal Singh had not been cross examined. The counsel for defendant has argued that the plaintiff has deliberately not come into witness box for his remaining cross-examination and thus no benefit shall be given to him. This court is of the opinion that if the plaintiff is not granted an opportunity to cross examine his witness then it would amount to denial of an opportunity for the plaintiff to prove his case. The entire case of the plaintiff would be dependent upon his testimony. It is settled principle of law that without granting an opportunity for cross examining the witness, the testimony of said witness cannot be read into evidence. Thus, it would amount to injustice to the plaintiff. Although the plaintiff and his counsel have not acted with due diligence in the present case yet in the interest of justice application deserves to be allowed. The plaintiff can be burdened with costs for the delay. As such, present application is allowed subject to costs of Rs.1000/-.

I have heard learned counsel for the petitioner and perused the record.

Needless to assert that if the plaintiff is not permitted to appear for further cross examination, that would severely effect his case, and, interest. In fact, his claim would remain unproved, for, even his examination-in-chief would not be read into. Even otherwise, an opportunity granted by the trial Court would hardly cause any serious

prejudice to the plaintiff, and even otherwise he has been compensated with costs.

That being so, no interference is warranted in the discretion exercised by the trial Court. The petition being devoid of merit is accordingly dismissed.

February 17, 2017
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(ARUN PALLI)
JUDGE

Whether speaking/reasoned Yes/No.

Whether reportable- Yes/No