

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

CR No.1513 of 2017.

Date of Decision: 02.03.2017.

Kamal Singh and another

....Petitioners.

VERSUS

Subhash Chander

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Vishal Aggarwal, Advocate for the petitioners.

SNEH PRASHAR, J.

The petitioners are aggrieved by the order dated 13.02.2017 passed by learned Additional Civil Judge (Senior Division), Pathankot (but wrongly mentioned as Judicial Magistrate Ist Class, Pathankot under the signatures) by virtue of which their (petitioners') application praying for an opportunity to cross-examine PW1, PW2, PW4, PW5 and PW6 was declined.

The submissions made by Mr. Vishal Aggarwal, learned counsel representing the petitioners have been heard.

Learned counsel for the petitioners submits that it was due to sheer negligence on part of counsel representing the petitioners before learned trial Court that the witnesses examined by the respondent-plaintiff were not cross examined. The petitioners were not aware of the said fact and they learnt about the same later after which they changed the counsel.

Submitting that in case the testimony of the witnesses is left un-cross-

examined on record, the defence of the petitioners will be seriously prejudiced, learned counsel asserts that only one opportunity to cross examine the witnesses be given.

Indeed, not one but five witnesses of the respondent-plaintiff were allowed to go without cross-examination by the counsel representing the petitioners. There being no cross-examination on the facts stated by the witnesses, the same will be deemed to be admitted by the petitioners and that will certainly cause serious prejudice to their case. No doubt, the orders passed by learned trial Court, reproduced by the petitioners in their petition, indicate that due opportunity was given to counsel for the petitioners to cross examine the witnesses, but in none of the orders the reason for treating the cross-examination as 'nil' was mentioned. Cross-examination of the witness by the opposite party is the only method to test the veracity of the witness. That helps in proper and complete adjudication of the case.

In order to avoid further delay in disposal of the case, notice is not being issued to the respondent and in the interest of justice one opportunity is given to the petitioners to cross examine the witnesses PW1, PW2, PW4, PW5 and PW6. Learned trial Court will fix an effective date of hearing on which all the witnesses will be produced by the respondent-plaintiff and the petitioners will conclude cross-examination of all the witnesses on the same day. The opportunity given is subject to costs of Rs.5000/-, which shall be deposited by the petitioners with the Legal Aid Authority. In the said terms, the petition is allowed.

(SNEH PRASHAR)
JUDGE

02.03.2017.
jitender sharma