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

CR-2044-2017 [O&M]

Date of Decision : March 22nd, 2017

Ashok Bansal

.... Petitioner

Versus

Municipal Council, Kaithal and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE [DR.] SHEKHER DHAWAN

Present Mr. R.D.Sharma, Advocate,
for the Petitioner.

SHEKHER DHAWAN, J.

Present petition is directed by the plaintiff-petitioner against the order dated 4.3.2017 [Annexure P/19] passed by learned Civil Judge [Junior Division], Kaithal, whereby learned trial Court dispensed with further cross-examination of DW-1, Anubhav Patwari.

2. For facility of reference, relevant portion of the impugned order is extracted below:-

“ In the instant case, the witness Anubhav Patwari, who is public servant, who remained present in the Court from last two dates from 9.00 AM till 4.00 PM leaving behind his official duties, but this witness was not cross-examined by the learned counsel for the plaintiff. Today, the learned counsel for the plaintiff is directed to appear by sharp 9.30 AM to cross-examine this witness but till 1.00 PM, the witness remained present except Sh. Kabaj Ram, learned

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proxy counsel for the plaintiff who sought adjournment for five minutes. Neither the plaintiff nor the main learned counsel for plaintiff has appeared to cross-examine this witness. Calling of any witness again and again, who is a public service [sic] nor cause necessary hardship to him but the public at large who was connected with the official duty. But witness. The learned counsel for the plaintiff has neither given any explanation any request to cross-examine this witness. Further adjournment for the same purpose is not justified. Accordingly, the further cross-examination of this witness is dispensed with. This witness is discharged from his evidence. Now, to come up on 7.3.2017 for remaining evidence of the defendant at own responsibility with last opportunity.”

3. Learned counsel for the petitioner contended that counsel representing the plaintiff-petitioner before the trial Court was busy in some other Court and for this reason, he could not come present for cross-examination of the witness. He has prayed that the petitioner be given one opportunity to cross-examine DW-1, Anubhav Patwari.

4. Having considered the submissions made by learned counsel for the petitioner and appraisal of record, this Court is of the considered view that the facts of the case are not disputed that Anubhav Patwari was examined in the Court on 27.2.2017. On that date, his examination-in-chief was recorded and cross-examination was deferred on the request of Plaintiff's counsel. The case was adjourned to 3.3.2017 on which date the same witness, who is a Patwari and public servant, remained in attendance of Court from 9.30 AM to 4.00 PM, but learned counsel representing the plaintiff failed to come present in the Court for the purpose of cross-examination without any justified reason. In such compelling

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circumstances, the Court considered it proper to adjourn the proceedings of the matter to the next date i.e., 4.3.2017. Again on 4.3.2017, the same witness remained in attendance of the Court, but the plaintiff's counsel failed to put in appearance to cross-examine the said witness and as such, the Court had to pass the impugned order. There is absolutely no ground to set-aside the impugned order because the Courts are to provide reasonable and fair opportunity to cross-examine the witness and if any body chooses not to cross-examine the witness or avail that opportunity, the Court is well within its power to dispense with the cross-examination and the same has been rightly done by the trial Court in this case.

5. In Gayathri Vs. M. Girish, 2016(3) R.C.R. (Civil) 942, the Hon`ble Supreme Court took a view that a counsel appearing for a litigant has to have institutional responsibility. The Code of Civil Procedure so command. The Court further laid down that it is not surprising that civil disputes drag on and on. The misplaced sympathy and indulgence by the Appellate and Revisional Courts compound the malady further. It is clear as day that everyone involved in the system of dispensation of justice has to inspire the confidence of the common man in the effectiveness of the judicial system. Sustenance of faith has to be treated as spinal sans sympathy or indulgence. If someone considers the task to be Herculean, the same has to be performed with solemnity, for faith is the “elan vital” of our system.

6. In the present case, same thing has happened and the impugned order was passed in those compelling circumstances. The same does not

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require any interference by this Court in this petition. The present revision
petition stands dismissed.

(SHEKHER DHAWAN)
JUDGE

March 22nd, 2017
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Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes