

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

CR-2178-2017 (O&M)
Date of decision: 27.4.2017

Bhola Singh

...Petitioner

Versus

Parkash Kaur and others

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.CL Verma, Advocate for the petitioner

SNEH PRASHAR, J.

CM-8939-CII-2017

The present application is for placing on record copy of zimni orders passed by learned trial Court as Annexures P4 and P5.

For the reasons mentioned in the application, the same is allowed. Annexures P4 and P5 are taken on record.

CR-2178-2017 (O&M)

The petitioner is aggrieved by the order dated 1.12.2016 passed by learned Civil Judge (Junior Division), Ludhiana vide which the cross-examination of PW2 was treated as 'Nil'.

The submissions made by Mr.CL Verma, Advocate representing the petitioner have been considered.

The plaintiff- respondent filed a suit for declaration to the effect that the agreement to sell dated 9.4.2009 executed

between the parties regarding the suit land stands cancelled. Learned counsel for the petitioner submits that in the case, the issues were framed on 9.10.2012 and thereafter, an application under Order VI Rule 17 of the Code of Civil Procedure filed by the plaintiff/ respondent was allowed on 21.7.2015 by learned trial Court. The plaintiff examined PW2 Baldev Singh on 1.11.2016 and his cross-examination was deferred for 1.12.2016. On the date fixed i.e.1.12.2016 counsel for the petitioner was busy in some other case due to which a date was sought but learned trial Court wrongly treated cross examination of PW2 as 'Nil'. Submitting that in case the testimony of the witness is left on record un-cross-examined, the defence of the petitioner will be seriously prejudiced, learned counsel prayed that only one opportunity to complete the cross-examination of PW2 Baldev Singh be given.

Indeed, non cross-examination of the witness by the petitioner will prejudice his defence as it will amount to admission of the facts stated by the witness, even when the petitioner with all vehemence is contesting the suit. Thus, in the interest of justice and to avoid unnecessary delay in the matter by issuing notice etc. to the respondents, in my considered opinion, the petitioner- defendant deserves to be given one last opportunity for cross-examination of PW2- Baldev Singh. It will cause no prejudice to the rights of the plaintiffs. The evidence recorded in due process of law will also

help the trial Court to better appreciate the issues involved and render substantial justice to the parties.

Resultantly, order dated 1.12.2016 is set aside and learned trial Court is directed to grant one effective opportunity to petitioner defendant to cross-examine PW2 Baldev Singh subject to his depositing Rs.5000/- as cost with the District legal Services Authority, Ludhiana.

However, it is made clear that if the petitioner-defendant fails to cross-examine PW2 Baldev Singh on the date so fixed by learned trial Court, no further opportunity shall be granted to him.

27.4.2017
gsv

(SNEH PRASHAR)
JUDGE

Whether speaking / reasoned?
Whether reportable?

Yes / No
Yes / No