

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

CR No.2377 of 2017 (O&M)

Date of decision: 26.05.2017

Vijay Kumar Godara

..Petitioner

Versus

Krishanjeet Singh and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Ajay Jain, Advocate
for the petitioner.

Mr. Padamkant Dwivedi, Advocate
for respondent No.1.

Daya Chaudhary, J.

The defendant-petitioner Vijay Kumar Godara has filed the present revision petition under Article 227 of the Constitution of India for setting aside impugned order dated 15.03.2017 (Annexure P-1) passed by the Civil Judge (Junior Division), Hisar, whereby, the defendant's right to cross-examine the witnesses has been waived off.

Respondent No.1-plaintiff-Krishanjeet Singh filed CR No.3887 of 2017, wherein order of closing his evidence has been challenged and the said petition has been allowed by granting one effective opportunity to conclude his evidence.

Learned counsel for the petitioner submits that the plaintiff's witness, namely, J.R. Verma was examined and Sh. Sanjay Garg, counsel for defendant No.9 was given opportunity to cross-examine said witness but he could not cross-examine him. Learned counsel further submits that due to

bonafide mistake, said witness could not be cross-examined. The plaintiff's witnesses were present in the Court on various dates but they could not be cross-examined. Learned counsel also submits that the case could have been adjourned for some other date as remedy is available under Section 35-A CPC or any other measure could have been adopted including last opportunity to the defendants but no such efforts were made by the trial Court. Learned counsel also submits that by passing impugned order, the foreclosure of defendants right to cross-examine plaintiff's witnesses has resulted in grave prejudice to the right of defence of the defendant.

Heard arguments of learned counsel for the petitioner and have also perused the impugned order as well as other documents available on the file.

On perusal of impugned order as well as other *zimni* orders, it is apparent that the right of the petitioner-defendant has been waived off by observing that the defendant was not interested in cross-examining the witnesses whereas the plaintiff's witnesses were present with their official record.

Although on perusal of *zimni* orders, it is apparent that cross-examination of plaintiff's witnesses could not be done as request was made by the defendant's counsel.

Since the order of closing the evidence of plaintiff-respondent No.1 has been set-aside and plaintiff-respondent No.1 has been given one opportunity to conclude his evidence, the defendant is also granted one opportunity to cross-examine the plaintiff's witnesses. The scope of exercise of judicial discretion is to achieve the ends of justice in furtherance

to the provisions of CPC. No doubt, the petitioner-defendant was granted sufficient opportunities to cross-examine the plaintiff's witnesses but in spite of that, said witnesses were not cross-examined. Although the speedy trial is fundamental right of the litigant and no good ground is made out to linger on the case for evidence, but by exercising the inherent powers and by considering interest of parties, the defendant-petitioner is also granted one opportunity to cross-examine the plaintiff's witnesses, which shall be restricted to one effective hearing after concluding the evidence by the plaintiff.

Accordingly, the present revision petition is allowed and impugned order dated 15.03.2017 is set-aside. The petitioner-defendant is granted one effective opportunity to cross-examine the plaintiff's witnesses subject to payment of costs of ₹5000/-, which shall be deposited with the trial Court.

26.05.2017
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned Yes

Whether Reportable No