

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.2386 of 2017
DECIDED ON: April 06, 2017

BALBIR KAUR SANDHU

.....PETITIONER...

VERSUS

BAHADUR SINGH

....RESPONDENT...

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Deepak Verma, Advocate and
Mr. Paramjit Rajput, Advocate
for the petitioner.

JASPAL SINGH, J. (Oral)

By virtue of instant petition preferred under Article 227 of the Constitution of India, the petitioner has sought setting aside of order dated 19.01.2017 (Annexure P-3) whereby opportunity of the petitioner-defendant to cross-examine the witnesses of respondent/plaintiff has been ordered to be treated as nil.

2. A glance at the various documents available on file reveals that the issues were framed in the civil suit on 19.01.2015 and for the first time, the suit was listed for the evidence of the plaintiff-respondent on 09.04.2015 and, thereafter, on 16.07.2015, PW-1 Bahadur Singh, PW-2 Gurpreet Singh and PW-3 Harvinder Kaur were came present in the Court and tendered their affidavits, which were taken on record as their examination-in-chief. However,

their cross-examination was deferred by the Court and suit was adjourned to 16.09.2015. On 16.09.2015, no witness was present and similarly, on the next date i.e. 28.10.2015 only PW-1 Bahadur Singh came present in the court, who was partly cross-examined. Even thereafter, on 20.11.2015, no witness was produced by the plaintiff-respondent for the purposes of cross-examination. Similarly on 04.01.2016, only PW-1 Bahadur Singh came and it was only for the first time, at the request of learned counsel for the petitioner, the case was adjourned for 01.04.2016. Even, thereafter, on 01.04.2016, no witness was present for his/her cross-examination. Even, from the perusal of other interim orders, it transpires that all the three witnesses, who are/were to be examined by the petitioner-defendant were not present together for their cross-examination and ultimately, vide order dated 19.01.2017, the impugned order was passed.

3. In view of the facts and circumstances narrated above, this Court is of the considered view that passing of impugned order whereby cross-examination of the plaintiff's witnesses has been ordered to be "treated as nil" is not legally and factually justifiable, especially, in the circumstances that plaintiff-respondent availed number of opportunities for his evidence and most of the time, the witnesses were not produced for cross-examination after tendering their examination-in-chief by way of affidavits. As such, the impugned order is not sustainable in the eyes of law. Accordingly, impugned order dated 19.01.2017 is set aside by way of acceptance of instant petition. The trial court is directed to afford two effective opportunities to the petitioner-defendant for the cross-examination of the witnesses, already examined-in-chief. They shall be produced by the respondent-plaintiff at his own responsibility.

4. Since, this order has been passed in the absence of respondents/defendants, if, he feels so aggrieved, he will be at liberty to approach this Court.

April 06, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned: Yes

Whether reportable: Yes/No