

CR No. 2550 of 2017

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 2550 of 2017

DATE OF DECISION:07.04.2017

Mohinder Singh and others

.....Petitioners

Versus

Satnam Singh and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. S.S. Sarwara, Advocate
for the petitioners.

DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 6.3.2017 (Annexure P-2) passed by learned Civil Judge (Junior Division), Rajpura, whereby, an opportunity to cross-examine the handwriting and finger print expert has been treated as nil.

Briefly, the facts of the case are that respondents-plaintiffs filed a suit for specific performance of agreement to sell dated 3.2.1995. Respondents-plaintiffs filed an application for amendment of the plaint under Order 6 Rule 17 CPC, which was allowed vide order dated 11.1.2017. Written statement to the amended plaint was filed by petitioners-defendants on 16.3.2016 and thereafter replication to the written statement was also filed on 12.5.2016. Issues were framed on 14.7.2016 and the case was fixed

for plaintiffs' evidence on 22.7.2016. The handwriting and finger print expert, namely, Sh. R.V. Vashisht was examined by the plaintiffs as PW-9 on 6.1.2017. The petitioners-defendants moved an application for cross-examination of said witness, which was allowed vide order dated 23.1.2017. Said witness came present on 6.1.2017 but he could not be cross-examined and the opportunity to cross-examine handwriting and finger print expert was treated as Nil vide order dated 6.3.2017, which is subject matter of challenge in the present petition.

Learned counsel for the petitioner submits that petitioners-defendants will suffer an irreparable loss if they are not allowed to cross-examine handwriting and finger print expert, namely, Sh. R.V. Vashisht. Learned counsel further submits that the mistake on the part of petitioners-defendants was bona fide and no prejudice would be caused to the either party. Learned counsel prays that one effective opportunity be given to the petitioners-defendants to cross-examine handwriting and finger print expert, namely, Sh. R.V. Vashisht and the petitioners are also ready to compensate the other party in monetary terms.

Heard the arguments advanced by learned counsel for the petitioners and have also gone through the impugned order and other documents available on the file.

Without issuing notice to the other party as it will not only prolong the case but will unnecessary burden the other party with expenses, the case is being decided.

Undisputedly, Sh. RV Vashisht, handwriting and finger print expert tendered his evidence in examination-in-chief on 6.1.2017. Thereafter an application was moved by the petitioners-defendants for

cross-examination of said witness, which was allowed on 23.1.2017. The witness could not be cross-examined and accordingly the impugned order dated 6.3.2017 was passed, whereby, an opportunity to cross-examination was treated as Nil. The cross-examination of handwriting and finger print expert, namely, Sh. RV Vashisht could not be done as counsel for the petitioners-defendants wanted his cross-examination in the presence of some handwriting and finger print expert. As per case of the petitioners, efforts were made but nobody was available on that particular day and the trial Court was also apprised of the difficulty but in spite of that the opportunity to cross-examine handwriting and finger print expert, namely, Sh. RV Vashisht was treated as Nil vide order dated 6.3.2017. In case there is lapse/ mistake on the part of the petitioners it was because of the act of counsel and same cannot be considered without any bona fide reason. The trial Court could have given one opportunity to cross-examine the handwriting and finger expert subject to imposition of cost but only on the ground that Court time was over, the opportunity to cross-examine was treated as Nil.

Provisions of Rule 1 Order 17 CPC deals with grant of time and adjournments, which are reproduced as under:-

“1. Court may grant time and adjourn hearing.—(1) The Court may, if sufficient cause is shown, at any stage of the suit, grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the suits.

(2) Costs of adjournment.—In every such case the Court shall fix a day for the further hearing of the suit, and shall make such orders as to costs occasioned by the adjournment of such higher costs as the Court deems fit:

Provided that, --

(a) when the hearing of the suit has commenced, it shall be continued from day to-day until all the witnesses in attendance have been examined, unless the Court finds that, for the exceptional reasons to be recorded by it, the adjournment of the hearing beyond the following day is necessary,

(b) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party,

(c) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment,

(d) where the illness of a pleader or his inability to conduct the case for any reason, other than his being engaged in another Court, is put forward as a ground for a adjournment, the Court shall not grant the adjournment unless it is satisfied that the party applying for adjournment could not have engaged another pleader in time,

(e) where a witness is present in Court but a party or his pleader is not present or the party or his pleader, though present in Court, is not ready to examine or cross-examine the witness, the Court may, if it thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the

examination-in-chief or cross-examination of the witness, as the case may be, by the party or his pleader not present or not ready as aforesaid. (emphasis supplied)

It is evident from Rule 2 (e) of Order 17 that in case a witness is present in the Court but the other side is not ready to cross-examine the witness, the Court can dispense with his cross-examination. But where a genuine and bona fide request is made for adjournment, instead of resorting to forfeiture of the right to cross-examine, the Court may grant time by imposing cost.

It is a settled proposition of law that a party should not suffer on account of negligence or inaction on the part of his/her counsel. In case the cross-examination of the some witness is necessary to decide the real controversy between the parties or it is the legal requirement of fair trial, an opportunity should be granted. In case adequate opportunities are not granted to the parties to the dispute, it may cause serious prejudice and injustice to their case.

In the present case, a request was made by counsel for the petitioners-defendants to cross-examine the handwriting and finger print expert, namely, R.V. Vashisht in the presence of some expert witness but the same was not granted and impugned order dated 6.3.2017 was passed. The trial Court could have given one opportunity subject to payment of cost. Moreover, no prejudice is going to be caused to the party opposite particularly when he can be compensated with adequate cost.

Accordingly, the present revision petition is allowed and impugned order dated 6.3.2017 is hereby set aside. The trial Court is directed to give one effective opportunity to the petitioners-defendants to

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cross-examine handwriting and finger print expert, namely, Mr. R.V. Vashisht subject to payment of costs of ₹10,000/- to be paid to the party opposite by way of draft.

However, the trial Court is directed to give only one effective opportunity to the petitioners-defendants failing which, they would not be entitled for any other opportunity.

April 07, 2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes