

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

CR-2928-2017 (O&M)

Date of decision: 26.4.2017

Rupinderjit Singh

...Petitioner

Versus

Gian Singh and another

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.AS Ahluwalia, Advocate for the petitioner

SNEH PRASHAR, J.

The petitioner is aggrieved by the order dated 1.4.2017 passed by learned trial Court dismissing his application for recalling the order dated 8.3.2017 vide which further cross-examination of PW3 Gian Singh was treated as 'Nil'.

The submissions made by Mr.A.S. Ahluwalia, Advocate representing the petitioner have been considered.

Learned counsel for the petitioner submits that on 14.2.2017, cross-examination of PW3 Gian Singh was partly recorded but his further cross-examination was deferred for want of copy of complaint. The case remained pending for cross-examination of the said witness for 21.2.2017 and 28.2.2017 due to strike by lawyers of the District Bar Association, Jalandhar. Thereafter, on 8.3.2017, in the morning hours, the case file was not traceable and during the post lunch period, counsel for the petitioner came to know that further cross-examination of the witness had been ordered to be treated as 'Nil'.

Counsel for the petitioner then filed an application for recalling the said order, but that too was dismissed by learned Trial Court. Submitting that in case the testimony of the witness is left un-cross-examined on record, the defence of the petitioner will be seriously prejudiced, learned counsel prayed that only one opportunity to complete the cross-examination of PW3 Gian Singh be given.

A perusal of the order dated 8.3.2017 passed by learned trial Court treating the cross-examination of PW3 Gian Singh as 'Nil' on behalf of the petitioner, shows that it is inconsistency in itself. While the presence of counsel representing the petitioner was recorded in the order, which indicates that the order was passed in the presence of the said counsel, but contrary to the same, the order is to the effect that throughout the day, learned counsel for the petitioner had not appeared in the court and ultimately at 3.45 P.M., the court was constrained to pass the said order. In the order dated 1.4.2017 also it was mentioned by learned trial Court that counsel for the petitioner had not appeared on 8.3.2017 for cross-examination of the witness and if the counsel was absent, it was wrong on the part of the trial Court to mark his presence while passing the order. In fact marking of presence of the counsel for the petitioner in the order supports his version that he had appeared in the court in the morning but the file at that time was not traceable and in the post lunch period after the file was traced, learned trial Court proceeded to record the cross-examination of the witness as Nil on account of his non-appearance.

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 to complete cross-examination of PW3. It will cause no prejudice to the rights of the plaintiff. 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, orders dated 18.3.2017 and 1.4.2017 are set aside and learned trial Court is directed to grant one effective opportunity to petitioner-defendant No.1 to cross-examine PW3 Gian Singh subject to his depositing Rs.5000/- as cost with the District legal Services Authority, Jalandhar, which shall be in addition to the cost already imposed by learned trial Court as mentioned in the order dated 8.3.2017.

However, it is made clear that if the petitioner -defendant No.1 fail to cross-examine PW3 Gian Singh on the date so fixed by learned trial Court, no further opportunity shall be granted to him.

26.4.2017
gsv

(SNEH PRASHAR)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No