

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

CR No.2971 of 2017 (O&M)

Date of decision: April 27, 2017

Rajinder and another

....Petitioners

Versus

Anant Ram and others

....Respondents

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Ravi Dutt Sharma, Advocate
for the petitioners.

JASPAL SINGH, J.(ORAL)

By virtue of the instant civil revision petition preferred under Article 227 of Constitution of India, petitioners have sought setting aside of the order dated 7th March, 2017 passed by Civil Judge(Junior Division), Kaithal whereby an application for recalling the order dated 9th January, 2017 whereby the cross-examination of PW1 was ordered to be treated as 'nil', has been declined.

The contention of learned counsel for the petitioners is that on 9th January, 2017, the case was fixed for the cross-examination of PW-1 Anant Ram but on that day, he could not be cross-examined as counsel for the petitioner/defendant was busy in some other Court and after the passing of the order with regard to cross-examination of PW-1 as 'nil', learned counsel for the petitioner/defendant closed his evidence. Subsequently, an application moved for recalling the order dated 9th January, 2017 has also been dismissed by observing that the same was not maintainable.

A glance at the various interim order(s) reveals that examination-in-chief of PW-1-Anant Ram by way of his affidavit was furnished in the Court on 1st December, 2016 and thereafter, the case was

adjourned on 9th January, 2017 for the purposes of cross-examination and on that date, impugned order dated 9th January, 2017 was passed by ordering the cross-examination as 'nil'. In the given circumstances, it cannot be said that the non-appearance of learned counsel for the petitioner/defendant was intentional or deliberate rather it was due to the reason that he was busy in some other Court. As such, it was desirable for the trial Court to allow the petitioner/defendant should have been afforded opportunity to cross-examine the said witness and to decide the matter in controversy effectively and judiciously.

Thus, this Court is of the considered view that impugned order is not sustainable in the eyes of law. Accordingly, it stands *set aside*. Instant petition is disposed of with direction to the trial Court to afford an effective opportunity not only for the cross-examination of PW-1 Anant Ram but also to examine any other witness of the respondent/plaintiff so intends in addition to the statement of PW-1 Anant Ram as the learned counsel for the respondent/plaintiff appears to have closed the evidence under the impression that testimony of PW-1 Anant Ram is unrebutted and unchallenged and then to proceed for its disposal in accordance with law.

Since this order has been passed in the absence of the respondents, if they so feel aggrieved, they shall be at liberty to approach this Court.

April 27, 2017
m. sharma

(JASPAL SINGH)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No