

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

**CR No.312 of 2017 (O&M).
Date of Decision: 18.01.2017.**

Hari RamPetitioner.

VERSUS

Smt. Shanti and othersRespondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Parmod Chauham, Advocate for the petitioner.

SNEH PRASHAR, J.

CM-809-CII-2017

Allowed, as prayed for.

CR-312-2017

This revision petition is directed against the order dated 06.01.2017 passed by learned Civil Judge (Junior Division), Gohana, District Sonapat by virtue of which the application filed by the petitioner seeking permission to give evidence on behalf of Hari Ram and for exemption from personal appearance of Hari Ram was dismissed.

The facts, as indicated in the instant petition and the impugned order are that a suit for separate possession by way of partition of the property, which was subject matter of that civil suit, was filed by the respondents. The suit was allowed and a preliminary decree dated 31.07.2009 was passed. In the application initiated by the respondents for passing a final decree, the petitioner filed objections which were put to trial.

Since the evidence of the petitioner was closed by court order, the petitioner filed a Civil Revision No.8414 of 2015 before this Court which was allowed vide order dated 19.01.2016. Thereafter, the petitioner appeared in the witness box on 15.02.2016 but his cross-examination could not be recorded on that date. When despite opportunities availed, he did not appear for the cross-examination, the evidence was again closed by Court order. The petitioner again approached this Court vide Civil Revision No.4161 of 2016 which was allowed and one opportunity was given to the petitioner to appear for his cross-examination. After receipt of order of this Court, learned trial Court fixed the case for 30.11.2016 for recording cross-examination of the petitioner. On the date fixed, the petitioner did not appear and in his place, a special power of attorney namely, Ashok Kumar appeared and an application was filed seeking permission to appear and make a deposition in place of the petitioner. The application was dismissed by learned trial Court and aggrieved by the same the instant revision has been filed.

The submissions made by Mr. Parmod Chauhan, learned counsel for the petitioner have been considered.

As was mentioned by learned trial Court in the impugned order and is also pleaded by the petitioner, this Court vide order dated 07.10.2016 had granted one opportunity to the petitioner-objector to conclude his evidence subject to payment of Rs.5000/- as costs. It is relevant to mention that in the order dated 07.10.2016, this Court recorded that although there was no merit in the revision petition, in as much as, a casual approach was being adopted by the petitioner in concluding the evidence, yet keeping in

opportunity to the petitioner to conclude his evidence. Surprisingly, yet on the date fixed by learned trial Court, the petitioner opted not to appear and a special power of attorney appeared in his place. The examination in chief of the petitioner was recorded, therefore, only he was supposed to appear for his cross-examination in compliance of the opportunity to conclude his evidence given by this Court.

No justifiable reason could be explained by learned counsel for the petitioner for non appearance of the petitioner on the date fixed. Even if, the contention of learned counsel that the petitioner was an old man or was unwell is accepted for the sake of argument, yet the petitioner had enough time before the date fixed for his evidence, to inform the Court about his inability to appear and ask for adopting the alternate mode of recording statement of an old/ill person. Instead of that the petitioner opted to produce a special power of attorney for cross-examination which obviously could not be allowed. In any case, it was not the prayer of the petitioner before this Court on 07.10.2016 that due to old age or ill health he was unable to appear before the Court when one opportunity was granted to him for producing his evidence. Apparently, the petitioner was adopting wrong tactics one after the other only to avoid his cross-examination and also to delay the proceedings. Finding no illegality or perversity in the order of learned trial Court and there being no merit in the petition, it is hereby dismissed.

(SNEH PRASHAR)
JUDGE

18.01.2017.
jitender sharma

Whether speaking/ reasoned : **Yes**

Whether Reportable : **No**