

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

Civil Revision No.3941 of 2017

Date of Decision:25.10.2017

Madan Lal

.....Petitioner

V/S

Hemant Kumar Khurana

.....Respondent

CORAM: HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr.Raman Chawla, Advocate for the petitioner.

Mr.Deepkanan, Advocate for

Mr. Lalit Sharma, Advocate for the respondent.

1. Revision petition seeks setting aside of order dated 07.04.2017-Annexure P-1 passed by the Learned Civil Judge, Ludhiana, whereby cross-examination of PW-1 and PW-3 was treated as concluded by treating opportunity of petitioner defendant to cross examine as nil.

2. Brief facts of the case leading to the filing of the instant petition are that the respondent/plaintiff filed a suit against the petitioner/defendant for specific performance of agreement to sell dated 15.07.2013 in respect of plot of land measuring 100 sq. yards for a sum of Rs. 4 lacs against earnest money of Rs.2 lacs. Date for execution of the sale deed was fixed as 15.01.2014 but the petitioner never appeared for executing the sale deed on said date. Eventually 17.01.2014 was fixed as the date for execution of the sale deed but even on the said date the petitioner/defendant did not appear before the Sub-Registrar leading to the respondent/plaintiff filing a suit against the petitioner defendant.

3. The petitioner/defendant appeared in the suit and filed a written statement.

Eventually the case was fixed for examination of PW's on 17.01.2017.

However, on said date, no PW was present, thereupon the case was adjourned for cross-examination of PW1, PW2 and PW3 and for entire evidence of the plaintiff to be produced on 09.02.2017 subject to payment of Rs.3000/- as costs to the witness. On 09.02.2017 no PW present, therefore the case was fixed for cross examination of PW1,PW2& PW3 and for entire evidence of the plaintiff to be produced on 15.03.2017.

4. On 15.03.2017 PW-1 i.e. Hemant Kumar was examined in part and his cross examination was deferred as Court time was over. The matter was thereupon adjourned to 07.04.2017 for cross examination of PW-1 and for entire evidence of the plaintiff to be produced on the said date. On 07.04.2017, PW-1 Hemant Kumar i.e. the respondent-plaintiff and his wife PW3 Rita Khurana were present from 9.30 A.M. but counsel for the defendant did not come forward to cross-examine the said PW's. In the aforementioned background, the learned trial Court by taking note of the examination in chief of PW1 and PW3 on 23.11.2016, counsel for the defendant having failed to cross-examine said PW's despite availing four effective opportunities, of PW1 and PW3 coming from Delhi and counsel for the defendant having been directed on the previous date to conclude the cross-examination of PW1 and PW3, and Court time being almost being over, ordered cross-examination of PW1 and PW3 concluded by treating opportunity of defendant to cross-examine as Nil. Thereafter, the plaintiff closed his evidence. At that stage, an application was moved for adjournment on the ground that counsel for the defendant was busy in the High Court.

5. Learned counsel for the respondent contended that four effective opportunities had been granted to the petitioner defendant. Besides it had

been made clear in order dated 15.03.2017 to the petitioner defendant to cross-examine PW-1 and for concluding entire plaintiff evidence on 07.04.2017. Learned Counsel contended that since counsel for the petitioner/defendant did not cross-examine the PW's, despite their presence on 07.04.2017, it was evident that the action of the petitioner/defendant was not bonafide, therefore, no indulgence was called for.

6. Admittedly, four effective opportunities were granted to the petitioner-defendant to cross-examine PW-1 and PW-3. Despite it having been made clear in order dated 15.03.2017 that the petitioner-defendant was to conclude the cross-examination of the PW's on the next date i.e. 07.04.2017, yet the petitioner-defendant did not act diligently by ensuring cross examination of the PW's as counsel for the petitioner defendant as per his own showing had on 07.04.2017 gone to the High Court. Even the courtesy of informing the PW's or for that matter, learned counsel for the respondent/plaintiff was not extended despite the fact that the PW's were to come all the way from Palwal to Ludhiana.

7. At this stage, learned counsel for the petitioner states that great prejudice would be caused to the petitioner/defendant in case the right to conclude cross-examination of PW-1 and PW-3 is denied. Prayer is made for grant of one opportunity to cross examine PW-1 & PW-3 on such terms and conditions as are deemed just and proper by this Court in the facts and circumstances of the case.

8. Learned counsel for the respondent states that the respondent-plaintiff travelled on a number of dates along with both PW's from Palwal by incurring huge expense and wasting time and in case opportunity was to be granted to the petitioner-defendant, then the same should be subject to

payment of appropriate costs.

9. I have heard learned counsel for the parties and considered their submissions. Although, in the facts and circumstances of the case, it cannot be said the petitioner-defendant acted with due diligence, however, taking into account the fact that the cross-examination of PW-1 and PW-3 has been carried out and has only to be concluded, it would be in the interest of justice if one opportunity is granted to the petitioner-defendant by suitably compensating the respondent-plaintiff by ordering payment of cost.

Accordingly, the revision petition is allowed. The impugned order is set aside and the petitioner-defendant is granted one opportunity to conclude the cross-examination of PW-1 and PW-3, subject to payment of costs of Rs. 20,000/-.

10. Parties through their Counsel are directed to appear before the learned trial Court on the date already fixed on which date the learned trial Court would give a date for concluding the cross-examination of PW-1 and PW3. It is made clear that only one opportunity would be given to the petitioner-defendant to conclude the cross-examination of PW-1 and PW-3 and no further opportunity would be given.

11. Learned trial Court to endeavour to conclude the trial as expeditiously as possible. Revision petition allowed in the aforementioned terms.

(B.S.WALIA)
JUDGE

25.10.2017

Anjal

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No