

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

CR No.3956 of 2017

Date of decision: May 31, 2017

Jaswinder Pal Singh and another

...Petitioners

Versus

Mohinder Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Harsh Garg, Advocate
for the petitioners.

JASPAL SINGH, J. (ORAL)

By virtue of the instant petition preferred under Article 227 of the Constitution of India, petitioners have sought setting aside the impugned order dated 2nd May, 2017 passed by the Civil Judge (Junior Division), Ludhiana in Civil Suit No.37343 of 2013 whereby an application moved by the petitioners for recalling orders dated 20th September, 2016 and 11th January, 2017, closing the evidence of petitioners/plaintiffs except the evidence of PW-8 Deepak Singhal, was dismissed.

Undisputably, PW-3 Parminder Pal Singh was examined-in-chief on 10th June, 2011 and his cross-examination was deferred. The case was adjourned time and again for evidence of the petitioners/plaintiffs. Ultimately, evidence of the petitioners/plaintiffs was closed vide order dated 20th September, 2016 except examination of PW-8 Deepak Singhal. However, at that time, it appears that due to some oversight or inadvertence, it did not come to the notice either of the Court or the

plaintiffs that PW-3 Parminder Pal Singh also requires to be cross-examined. An application for review of the order dated 20th September, 2016 as well as 11th January, 2017 was filed by the petitioners/plaintiffs but that was dismissed vide impugned order dated 2nd May, 2017 for the simple reason that the plaintiffs have failed to show reasons for inability to procure the evidence but in fact, it was also the duty of the Court concerned to see whether witness(es) is/are cross-examined who have already been examined-in-chief. It cannot be said that there was any intentional or willful lapse on the part of petitioners/plaintiffs for non-production of PW-3 Parminder Pal Singh for the purposes of his cross-examination by respondent/defendants. PW-3 Parminder Pal Singh is none-else but one of the marginal/attesting witnesses of agreement to sell dated 17th May, 2005 which is the foundation of the suit for specific performance. The evidence of PW-3 Parminder Pal Singh is essential for the proper and effective adjudication of the matter in controversy between the parties. Moreover, for any lapse or omission on the part of the counsel or the Court, a party cannot be made to suffer.

Thus, this Court is of the considered view that impugned order(s) dated 2nd May, 2017, 20th September, 2016 as well as 11th January, 2017 are not sustainable in the eyes of law. As such, the same are *set aside* by way of acceptance of the instant petition. Trial Court is directed to provide an opportunity to the petitioners/plaintiffs to produce PW-3 Parminder Pal Singh in the Court for the purpose of his cross-examination by the respondents/defendants and then to proceed with the disposal of the matter in accordance with law.

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

May 31, 2017
m. sharma

(JASPAL SINGH)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No