

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No. 4486 of 2017 (O&M)

Date of Decision: 12.07.2017

Sukhdev Singh

... Petitioner

Vs.

Tarlok Singh and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Ritesh Pandey, Advocate
for the petitioner.

RAJIV NARAIN RAINA, J.(Oral)

Having considered the circumstances on the facts of the case that the counsel could not appear in court at the hearing on 21.03.2017 because his mother fell ill, the impugned order passed by the learned Additional Civil Judge, Senior Division, Batala may cause injustice to the plaintiff. If the plaintiff's counsel could not reach Court to cross-examine the defendant's witness at 21.03.2017, another date could have been given. After the passing of the order, the plaintiff moved an application for review of the order which has also been dismissed.

On a consideration of the arguments of learned counsel for the petitioner and on perusing the order sheet relevant to the case, which is reproduced in the body of the petition, I am inclined to think that this petition deserves to be allowed and one opportunity deserves to be given to the petitioner to cross-examine the defence witness who was present in court on 21.03.2017 by recalling the witness to face cross-examination. As a result of this, petition is allowed ex-parte. No prejudice would be caused to the defendants and especially when they took three dates to produce their defense witness and when there was a direction issued by the Court that the defendants would conclude their entire evidence at their own responsibility

on 21.03.2017, then the date may have been critical for production of the defence witness but still and at the same time however important the date was under the directive of the Court for production of evidence, the personal difficulty faced by the counsel for the petitioner to be beside his mother ought to have been considered by the trial court as bona fide explanation of his absence when the case was fixed for recording defendants evidence.

To avoid any miscarriage of justice, I have noticed the contents of the application filed by the counsel for the petitioner regarding illness of his mother, and I did not think it fit to make any negative comment on them. The averments are certainly not improbable. Some allowance must deservedly be given to serve the ends of justice. That apart, dismissal of the present petition would result in the statement of the defence witnesses becoming legal evidence with opportunity of cross-examination denied forever, otherwise the trial may be half-baked and incomplete without a cross examination conducted.

Accordingly, the petition is allowed with the above observations and the impugned order is set aside.

Trial Court is directed to summon witnesses who have not been cross-examined and give one effective opportunity to the plaintiff to cross-examine those witnesses on any date found convenient to the trial Court and there is sufficient court time available. If any extraordinary circumstances present themselves on the date to be fixed for the recording of cross examination, which are either beyond the control either of the plaintiff or the defendants or contemplated, then it will be within the jurisdiction, competence and discretion of the trial Court to set down another date for the

parties to appear for the recording of evidence.

There will be no order as to costs in view of the nature of the reason which led to non-appearance of the counsel for the plaintiff.

(RAJIV NARAIN RAINA)
JUDGE

12.07.2017
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<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>