

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

C.R. No.461 of 2017 (O&M)
Date of Decision: 23.01.2017

Pargat SinghPetitioner

Versus

Amarjit Kaur and othersRespondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Dilpreet Singh Gandhi, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 01.12.2016 passed by Additional Civil Judge (Senior Division)-cum-Judicial Magistrate Ist Class, Tarn Taran, whereby, the application moved by the plaintiff-respondents has been allowed.

Briefly, the facts of the case are that the plaintiff-respondents filed a suit for possession by specific performance of agreement to sell against the petitioner-defendant. During pendency of the suit, an application was moved by the respondents to cross-examine the witness of the petitioner-defendant. Reply of the said application was filed by the petitioner. Thereafter, the application was allowed vide order dated 01.12.2016, which has been challenged in the present revision petition.

Learned counsel for the petitioner submits that the case was fixed for evidence of the petitioner and the petitioner tendered his affidavit

as examination-in-chief. Thereafter, the case was adjourned on various dates and even last opportunity was granted to the respondents but still no cross-examination was done by the respondents. Learned counsel for the petitioner further submits that after getting so many opportunities, the application was moved just to delay the matter and harass the petitioner. Reply filed to the application was not taken into consideration while passing the impugned order. Learned counsel also submits that only the petitioner is the sufferer. It is also the argument of learned counsel for the petitioner that the application moved by the respondents was allowed and the petitioner has not been compensated as cost has been ordered to be deposited with District Legal Services Authority, Tarn Taran.

Heard the arguments of learned counsel for the petitioner and have also perused the impugned order as well as other documents on the file.

Facts relating to suit and moving application by the respondents and thereafter filing of reply to the application are not disputed. The application was moved by the respondents for allowing them to cross examine the witness produced by the petitioner-defendant. Undisputedly, the case was fixed for evidence of the petitioner-defendant who tendered his affidavit as examination-in-chief and thereafter, it was adjourned on many dates. During pendency of the suit, an application was moved for cross-examination of the witness of the petitioner.

A perusal of application shows that counsel for the plaintiffs was suffering from some ailment and thereafter, he was undertaking treatment and hence, he could not come present in the Court to cross-examine the witness. Thereafter, the cross-examination of the petitioner

witness was treated as nil.

It is a settled proposition of law that party should not suffer due to lapse of the counsel. Even in the present case, there was no lapse on the part of the party but because of ailment of counsel, the defendant's witnesses could not be cross-examined. The said application was opposed by the petitioner on the ground that it has been filed just to prolong the proceedings and to delay the case. The application moved by the respondents was allowed subject to payment of costs. Only one opportunity was granted to plaintiff-respondents to cross-examine four witnesses on the same date and no further opportunity was to be granted. The purpose is not to delay the proceedings as only one opportunity has been granted. However, the cost has been ordered to be deposited with District Legal Services Authority, Tarn Taran, whereas, the petitioner should have been compensated for having date for cross-examination of the witnesses.

No doubt, while exercising discretionary and equitable jurisdiction under Article 227 of the Constitution of India, the facts and circumstances of the case are to be considered to see as to whether any miscarriage of justice is there or the other party is going to be prejudiced.

The medical record was also placed on record in support of the plea taken by the counsel and there was a stone in his kidney at the time when cross examination of defendant's witnesses was treated as Nil.

After perusal of medical record, the trial Court came to the conclusion that the party should not be made to suffer for the reason that their counsel had not examined the defendant's witnesses due to ill health and the application was allowed subject to payment of ₹ 5,000/- to be deposited with District Legal Services Authority, Tarn Taran, whereas, the

amount is to be released to the petitioner.

In view of the above, I find no reason to interfere with the proposition of law as only one opportunity has been granted to the respondents to cross-examine the witnesses. However, the cost amounting to ₹ 5,000/- shall be paid to the petitioner by the defedant respondents.

The petition is disposed of accordingly.

(DAYA CHAUDHARY)
JUDGE

23.01.2017
gupreet

Whether speaking/reasoned

Yes

Whether Reportable

Yes