

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R. No. 4941 of 2017

Date of decision:- 31.07.2017

Om Parkash

...Petitioner

Versus

Smt. Santosh Kumari and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Ms. Deepa Jain, Advocate
for the petitioner.

RITU BAHRI J. (Oral)

This petition under Article 227 of the Constitution of India is for setting aside order dated 17.07.2017 (Annexure P-1) passed by the learned Civil Judge (Sr. Divn.) Barnala, whereby the application under Order 18 Rule 17 CPC seeking recalling of the order dated 17.02.2017 whereby cross examination of three D.W's Santosh Kumari, Gobind Pal and Sh. Som Nath, Advocate were treated as Nil due to non availability of the counsel for the plaintiff/petitioner.

A bare perusal of the impugned order shows that on 17.02.2017, D.W's Santosh Kumari, Gobind Pal and Sh. Som Nath, Advocate were present but the counsel for the petitioner did not put an appearance to cross examine the above witnesses and the proxy counsel sought adjournment on the ground that counsel is unwell. However, the learned Court below has dismissed the application of the petitioner to cross examination of three D.W's Santosh Kumari, Gobind Pal and Sh. Som Nath, Advocate on the ground that as per zimini order placed on record by learned counsel for the defendant, learned counsel for the plaintiff appeared on that

date and conducted the other cases.

Learned counsel for the petitioner has relied upon a judgment of this Court in a case of *Pargat Singh vs. Amarjit Kaur and others, 2017 (3) R.C.R (Civil) 106* wherein in a similar circumstances, this Court held that party should not suffer due to lapse of counsel.

In the present case, it was the counsel who did not appear and was contesting other cases.

Applying the ratio of the above said judgment to the facts of the present case, the revision petition is *disposed of* and the order dated 17.07.2017 (Annexure P-1) passed by the learned Civil Judge (Sr. Divn.) Barnala is set aside. Accordingly, the trial Court is directed to give one effective opportunity to the petitioner to cross examine three D.W's Santosh Kumari, Gobind Pal and Sh. Som Nath, Advocate, subject to payment of cost of Rs.5000/- to be paid by the petitioner to the defendants.

A copy of this order be given *dasti* under the signatures of Court Secretary.

July 31, 2017
G Arora

(*RITU BAHRI*)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No