

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

CR No. 5275 of 2017(O&M)

Date of decision: 10.8.2017

Baldev Raj

....Petitioner

VERSUS

Garib Dass

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Surinder Sharma, Advocate for the petitioner.

REKHA MITTAL, J.(Oral)

The petitioner has approached this Court with a prayer to provide an opportunity to cross examine the respondent/plaintiff Garib Dass PW1 and Jaswinder PW2. It is submitted that Garib Dass PW-1 was partly cross examined on 08.03.2017 but the case was adjourned at the request of counsel for the respondent/plaintiff for 17.04.2017. On the adjourned date, as the Advocates were abstaining from work, the case was adjourned to 17.05.2017. On two occasions i.e. 17.05.2017 and 03.07.2017, the witnesses were present but were not cross examined on the request made by counsel for the petitioner/defendant. It is argued that though there was some lapse on the part of counsel representing the petitioner as he failed to cross examine the witnesses on two dates but in case the petitioner is not allowed to cross examine the witnesses, it would be of serious consequence for the petitioner.

Another submission made by counsel is that after evidence of the respondent/plaintiff was closed, no evidence has been adduced by the petitioner till date.

I have heard counsel for the petitioner, perused the paper-book and the zimini orders reproduced in the grounds of revision.

Be that as it may, it is apparent that counsel representing the petitioner, without any justifiable reason failed to cross examine the plaintiff and his witness on two opportunities provided by the Court for 17.05.2017 and 03.07.2017. At the same time, in case the petitioner is not permitted to cross examine the witnesses it would be of serious consequence for him as unchallenged testimony of the witnesses would be accepted as correct on its face value.

Perusal of the order would reveal that the respondent has filed a suit for injunction (mandatory) calling upon the petitioner to hand over vacant possession of property in dispute as well as recovery of mesne profits. Possibility of the petitioner being interested to delay the proceedings in the given circumstances cannot be ruled out. However, keeping in view the principles of natural justice, the petitioner is provided with one opportunity to cross examine Garib Dass PW1 and PW-2 subject to the following conditions:-

1. The Court below shall recall the aforesaid witnesses for their cross examination/further cross examination on a date to be fixed by the Court.
2. The petitioner shall deposit Rs.15,000/- in the trial Court within a period of 15 days and the same shall be disbursed equally to the witnesses, ordered to be recalled.

3. In case the petitioner fails to conclude cross examination of the witnesses on the date fixed by the Court, he shall not be entitled to further opportunity for their cross examination.

Failure of the petitioner to comply with any of the aforesaid conditions would entail dismissal of the petition. The trial Court shall ensure that the petitioner concludes his evidence in three effective opportunities after cross examination of the aforesaid witnesses is concluded. With the aforesaid observations, the petition stands disposed of.

Before parting with this order, it is clarified that the petition has been disposed of without notice to the respondent in order to save him from unnecessary expense and inconvenience. However, the respondent would be at liberty to file an appropriate application in case he has any grievance to express.

AUGUST 10, 2017

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no