

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

CR No. 5395 of 2017

Date of Decision: 16.08.2017

HARJINDER SINGH

-PETITIONER

VS

GURDEEP KAUR AND ANOTHER

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Vikas Gupta, Advocate,
for the petitioner.

RAJ MOHAN SINGH, J. (ORAL)

Petitioner has assailed the order dated 21.07.2017 passed by Civil Judge (Senior Division), Khadoor Sahib vide which cross-examination of DW1 was treated to be nil at the instance of the plaintiff-petitioner.

Plaintiff filed a suit for declaration. At one point of time, the suit was dismissed under Order 17 Rule 3 CPC on 09.02.2014 but in appeal filed by the plaintiff, the same was allowed on 11.12.2015, thereby giving three opportunities to each of the parties to lead evidence. Thereafter, plaintiff evidence was closed within the stipulated time, however, defendants consumed as many as 11 opportunities in leading defence evidence. Defendants evidence was closed by order of the Court on 11.04.2017.

Civil Revision No.3452 of 2017 was filed by the defendants. Vide order dated 17.05.2017, defendants were allowed to produce DW1 and DW2 for cross-examination of the plaintiff subject to payment of costs of Rs.3000/-. It was observed that no further opportunity shall be granted to the defendants for that purpose. On the date fixed i.e. 21.07.2017, the advocate of the plaintiff reached the Court slightly late and the opportunity to cross-examine DW1 was treated to be nil. An application was filed on the same date i.e. 21.07.2017 at 01.05 P.M. The trial Court dismissed the application on the ground that one opportunity was given to the defendants as per order dated 17.05.2017 passed in Civil Revision No.3452 of 2017.

Learned counsel submitted that order dated 17.05.2017 was passed by the High Court without even summoning the plaintiff-petitioner in the interest of justice.

I have considered the issue involved in the present revision petition.

The trial Court should have given an opportunity to the plaintiff to cross-examine the witness on 21.07.2017, particularly in view of the fact that necessary application was filed on that very date at 01.05 P.M. When the High Court granted one opportunity to the defendants on 17.05.2017, no notice was issued to the plaintiff-petitioner as the Court was

satisfied that one opportunity was required to be given to the defendants in the interest of justice.

In view of nature of order which this Court proposes to pass, there is no necessity of issuing notice to the respondents as it would lead to delay in disposal of the case before the trial Court and the respondents would be burdened with unnecessary expenses.

In view of facts and circumstances of the case, I am of the view that the impugned order needs to be set aside. The petitioner is entitled to be given one opportunity to cross-examine DW1 for which trial Court is directed to fix a date for doing the needful in the aforesaid context, subject to payment of costs of Rs.10,000/- to be paid to the defendants in equal proportion.

Payment of costs shall be the condition precedent for granting indulgence by the trial Court in the aforesaid context.

Disposed of.

16.08.2017
jjyoti

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No