

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

**Civil Revision No.5836 of 2013 (O&M)
Date of decision: 21.11.2017**

Parbhu Dayal and another

.....Petitioners

Versus

Shashi Jain and another

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Bhupender Singh, Advocate,
for the petitioners.

Ms. Ramandeep Kaur, Advocate,
for Mr. Shashi Jain, Advocate,
for respondents.

Ritu Bahri, J.

Challenge in this petition is to the order dated 19.08.2013 (Annexure P-1) passed by the Civil Judge (Senior Division), Panipat, whereby evidence of defendants-petitioners has been closed by order.

Learned counsel for the petitioners states that pursuant to the order dated 25.07.2011 passed by this Court, one effective opportunity was granted to the defendants to conclude their evidence.

Thereafter, the case was taken up before the trial Court on 20.08.2011 and in compliance with the order dated 25.07.2011 passed by this Court, defendants-petitioners had brought the costs of Rs.5000/- to be paid to the plaintiff-respondent. However, plaintiff No.1 was not present in Court on that date. On that day, three DWs were examined-in-chief and

their cross-examination was deferred on the request of proxy counsel for the plaintiffs. Case was adjourned to 08.09.2011 for payment of costs and cross-examination of deferred witnesses. On the next date i.e. 08.09.2011, three witnesses of the defendants were present for their cross-examination, but the plaintiff (respondent No.1 herein) moved an application for summoning the file from the record room and stated that she would cross-examine the witnesses only after receipt of the said file. On her request, cross-examination of the witnesses of defendants was deferred. As per zimni order dated 29.09.2011, summoned file had not been sent by the Record Keeper, SDO (Civil), Panipat, therefore, warrants of arrest had been issued against him for 08.10.2011. On that date, plaintiff had sought an adjournment, whereupon the case was adjourned to 05.11.2011. On 05.11.2011, the summoned file was not produced and the case was adjourned to 11.11.2011. On that date, plaintiff moved an application under Section 65 of the Evidence Act, which was dismissed vide order dated 10.12.2011 and the case was adjourned to 05.01.2012 for cross-examination of witnesses of the defendants. Thereafter, the case was consistently adjourned on 05.01.2012, 21.01.2012, 18.02.2012, 02.04.2012, 23.04.2012, 28.04.2012, 10.05.2012, 31.05.2012, 25.07.2012, 22.08.2012, 15.09.2012, 04.10.2012, 27.10.2012, 20.11.2012, 07.12.2012, 21.12.2012, 16.01.2013, 16.03.2013, 15.04.2013 and 09.05.2013. Ultimately, vide impugned order dated 19.08.2013, evidence of the defendants-petitioners has been closed by order. On most of the dates, DWs were present, but could not be cross-examined by the plaintiff for one reason or the other.

At this stage, learned counsel for the petitioners states that he does not want to get examined three witnesses of the defendants and

restricts his prayer for cross-examination of DWs Parbhu Dayal and Balbir Singh.

In the given circumstances of the case, to impart complete justice to the parties, it would be appropriate, if adequate opportunity is provided to the defendants-petitioners to lead their evidence.

Accordingly, the impugned order dated 19.08.2013 (Annexure P-1) is set aside and trial Court is directed to provide one effective opportunity to defendants-petitioners to conclude their evidence by getting the cross-examination of aforesaid DWs conducted from plaintiffs. It is made clear that plaintiffs or their counsel will not seek adjournment for cross-examination of DWs.

Allowed accordingly.

21.11.2017
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No