

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

**CR No.5627 of 2017(O&M)
Date of Decision: 23.08.2017**

Gurmeet Singh

...Petitioner

Versus

Swarna Rani

...Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: - Mr. J.S. Lalli, Advocate
for the petitioner.

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HARINDER SINGH SIDHU, J.

This revision petition has been filed impugning the order dated 9.1.2017 (Annexure P-4), whereby, the oral evidence of the plaintiff-petitioner was ordered to be closed except for the cross-examination of PW-4. The petitioner is also impugning the order dated 18.7.2017 (Annexure P-7), whereby, the application of the petitioner for recalling the order dated 9.1.2017 has been dismissed.

The petitioner filed a suit for specific performance of the agreement to sell dated 11.3.2008, whereby, the respondent-defendant had agreed to sell the property/ House No.1-B (measuring 5 marla 103 sq. ft.) situated at Raja Garden, Basti Peer Daad Khan, Tehsil and District Jalandhar and further for perpetual injunction restraining her from alienating, mortgaging and transferring the suit property to any person.

Learned counsel for the petitioner contends that on 6.1.2016 PW-1 Manoj Kumar, who is attesting witness of the agreement to sell was examined-in-chief. However, his cross-examination was deferred on the

for cross-examination of the said witness. Ld. Counsel argues that PW-1 did not come present on the subsequent dates as he was not specifically bound down for the said purpose. PW-4 was partly examined on 9.1.2017 and the case was adjourned to 25.1.2017 for his remaining cross-examination. On 25.1.2017, PW-4 did not appear and the case was adjourned to 1.2.2017 for the same purpose, on which date his cross-examination was completed and the order closing the oral evidence of the petitioner was passed.

Learned counsel contends that in the absence of cross-examination of PW-1, the petitioner will be gravely prejudiced. He argues that his non-appearance was on account of the fact that after his cross-examination was deferred, he was not bound down to appear on any subsequent date for cross-examination. Learned counsel prays that one effective opportunity may be granted for cross-examination of PW-1.

I have heard Ld. Counsel for the petitioner and perused the paper book.

Though Ld. Counsel for the petitioner has contended otherwise, but it appears that there are lapses on the part of the petitioner. As recorded in the order dated 18.7.2017, the petitioner had availed number of opportunities to conclude his evidence. Vide order dated 3.10.2016 while adjourning the case to 27.10.2016, the petitioner was asked to take *dasti* summons for the un-examined witnesses, if desired, but he failed to do so.

However, considering the totality of the circumstances, since PW-1 is stated to be the attesting witness of the document, I feel it would be in the interest of justice if the limited prayer of the petitioner to recall PW-1 for cross examination is granted.

Accordingly, the revision petition is allowed. The impugned

orders dated 9.1.2017 and 18.7.2017 (Annexure P-4 and P-7) are set aside. The trial Court is directed to grant one effective opportunity to the petitioner for cross-examination of PW-1. For this purpose, the Trial Court may summon PW-I. This shall be subject to payment of Rs.10,000/- as costs by the petitioner.

The present petition has been disposed of without issuing notice to the respondent as that may not only delay the proceedings but also burden her with unnecessary expenditure. However, if the respondent feels aggrieved of this order, she would be at liberty to file an application for recalling the order.

August 23, 2017
Atul

(HARINDER SINGH SIDHU)
JUDGE

Whether speaking/ reasoned:
Whether Reportable:

Yes/No
Yes/No