

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

CR No.8036 of 2017(O&M)

Date of decision: 17.11.2017

Harjinder Singh @ Bhola

.....Petitioner

VERSUS

Rajiv Kumar Tandon and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Naresh Kumar Kalia, Advocate for the petitioner.

REKHA MITTAL, J.(Oral)

The petitioner/defendant has approached this Court with a prayer to provide one opportunity to enable the petitioner to cross-examine PW-2 and PW-3 whose cross examination was treated as Nil vide order dated 31.08.2017.

Counsel for the petitioner has submitted that PW-2 and PW-3 tendered into evidence their duly sworn affidavits on 16.08.2017 and the case was adjourned for their cross examination to 31.08.2017. The Court below, in the order impugned has noticed that witnesses were present since morning but counsel for the defendant failed to appear to cross-examine the witnesses but in the order presence of counsel for the defendants has been recorded and so also the factum that counsel for the defendant was present in the Court in the morning hours. It is further submitted that the trial Court without considering consequence of failure of the defendant to cross examine witnesses of the plaintiff, in an unwarranted hurry, closed right of the petitioner to cross examine PW-2 and PW-3. It is prayed that

the petitioner may be allowed one opportunity for cross examination of PW-2 and PW-3.

Perusal of orders dated 16.08.2017 and 31.08.2017 would substantiate contentions raised by counsel for the petitioner that the Court closed right of the petitioner/defendant to cross examine PW-2 and PW-3 only on account of single default by his counsel to cause appearance when the case was called for cross examination of the witnesses though counsel was present before the Court in the morning and his presence has been recorded in the zimini order. The present is a glaring example of '*justice hurried is justice burried*'. The trial Court without appreciating adverse consequence likely to ensue for petitioner's failure to cross examine the witnesses has closed his right to cross examine PW-2 and PW-3. The Officer concerned is advised to be careful in future so that contesting claims of the parties are not thrown overboard on technical considerations.

For the foregoing reasons, the petition is allowed. Order dated 31.08.2017 treating cross examination of PW-2 and PW-3 as nil is set aside. The petitioner is allowed one effective opportunity to cross examine PW-2 and PW-3 on the date to be fixed by the trial Court. However, the petitioner shall ensure presence of his counsel on the date fixed so that the witnesses are cross examined on that date. It is clarified that after cross examination of PW-2 and PW-3, the respondent/plaintiff may be given opportunity to lead further evidence as he closed his evidence in the existing scenario.

NOVEMBER 17, 2017
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned : yes/no