

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

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Civil Revision No. 2033 of 2018 (O&M)
Date of decision: 27.03.2018

Naranjan Singh and others *Petitioners*

Versus

Bhundi Kaur alias Bhandi Kaur and others *Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Gaurav Sharma, Advocate
for the petitioners

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Rekha Mittal, J. (Oral)

The present petition impugns orders dated 24.05.2017 (Annexure P1) and 01.03.2018 (Annexure P2) passed by the Civil Judge (Junior Division), Barnala whereby evidence of the petitioners has been closed by order and application for recalling order dated 24.05.2017 was dismissed.

Counsel for the petitioners would urge that Darshan Singh, one of the plaintiffs appeared in the witness box on 22.03.2017 and tendered into evidence his affidavit by way of examination-in-chief but his cross examination was deferred at the request of counsel for the respondents/defendants for 21.04.2017. It is argued that had counsel for the respondents/defendants cross examined Darshan Singh (PW3) on the day he was examined in chief, statement of the witness would have been completed on 22.03.2017 itself. Counsel would fairly inform that the trial Court

adjourned the case on a number of occasions for his cross examination but he failed to appear in the witness box. It is submitted that as a matter of fact, two suits between the same parties are pending in the Court at Barnala and the petitioners filed application for transfer of case, TA No. 05/2017 on 29.03.2017 which was eventually disposed of by the District Judge on 08.12.2017. It is argued that though the trial Court had been recording orders in the case filed by the petitioners but both the parties were under the impression that no effective proceedings would be conducted since the application for transfer was filed and pending before the District Judge. It is further argued that after closing evidence of the petitioners, the respondents/defendants did not examine any witness till 06.02.2018, the day examination-in-chief of two witnesses was recorded and the instant application for recalling order dated 24.05.2017 was filed by the petitioners. It is argued with vehemence that even if there was some lapse on the part of the petitioners to ensure presence of Darshan Singh (PW3) before the Court on the dates fixed for his cross examination, in the interest of substantial justice, the petitioners may be allowed one opportunity for cross examination of Darshan Singh by the opposite party. It is further submitted that the respondents can well be compensated with costs for delay attributable to the petitioners.

Perusal of the various zimini orders recorded in the transfer application as well as in the suit filed by Naranjan Singh and others substantiates contention of the petitioners that during pendency of the transfer application, there was no progress in the case as none of the parties adduced any evidence despite evidence of the petitioners being closed vide

order dated 24.05.2017. The respondents/defendants did not adduce any evidence despite case being adjourned for defendants evidence for about ten times. PW3 Darshan Singh is the plaintiff, whose cross examination was deferred on 22.03.2017 at the request of counsel for the respondents/defendants. Counsel would inform that other two plaintiffs Naranjan Singh and Baltej Singh have not been examined in the case and the petitioners wanted to examine only Darshan Singh. In case the petitioners are not permitted to get cross examination of Darshan Singh completed, his statement cannot be read into evidence and it would be of serious consequence for the petitioners.

No doubt, there was remiss on the part of petitioners to ensure presence of Darshan Singh (PW3) as various dates were fixed by the trial Court for the purpose but still when substantial justice is pitted against technical considerations, cause of justice must receive primacy. In the given scenario, it is expedient in the interest of justice that Darshan Singh is allowed one opportunity to tender himself in the witness box for cross examination by the respondents/defendants.

For the foregoing reasons, the orders impugned are set aside. The petitioners are provided with one effective opportunity for cross examination of Darshan Singh by the respondents/defendants, subject to the following conditions:-

- (1) the petitioners shall ensure presence of Darshan Singh on the date to be fixed by the trial Court for his cross examination; and
- (2) the petitioners shall deposit an amount of

Rs.20,000.00 in advance with the trial Court, to be
paid to the defendants/respondents towards costs.

Failure of the petitioners to comply with either of the
conditions would entail dismissal of the petition.

Before parting with the order, it is clarified that the instant
petition has been disposed of without notice to the respondents in order to
avoid inconvenience and incurring expenditure by them. However, if the
respondents have any grievance to express, they shall be at liberty to file an
appropriate application before this Court.

(Rekha Mittal)
Judge

27.03.2018
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No