

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

Civil Revision No.2431 of 2017 (O&M)

Date of decision: May 11, 2018

Gurbachan Singh

...Petitioner

Versus

Charanjit Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.G.S.Jagpal, Advocate
for the petitioner.

Mr.P.L.Singla, Advocate
for the respondent.

INDERJIT SINGH, J.

Petitioner Gurbachan Singh has filed this revision petition against respondent Charanjit Singh under Article 227 of the Constitution of India for setting aside the order dated 23.02.2017 passed by learned Civil Judge (Junior Division), Jagraon, vide which the cross-examination of PWs has been treated as nil.

Notice of motion was issued. Learned counsel for the respondent appeared and contested the petition.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that Charanjit Singh plaintiff-respondent filed a suit against Gurbachan Singh defendant-petitioner for

recovery of ₹13,35,000/- (₹12,00,000/- principal + ₹1,35,000/- interest).

Learned Civil Judge (Jr. Divn.), Jagraon, on dated 23.02.2017 passed following order:-

“PWs namely Charanjit Singh and Shanti Lal are present to face cross-examination but counsel for defendant not cross-examined the said witnesses. However, counsel for defendant moved an application for adjournment for conducting cross-examination of said PWs. Perusal of file reveals that both PWs have been appeared in the court to face cross-examination from last five dates of hearing but they are not cross-examined by the counsel for defendant without any plausible reason. Under these circumstances, I do not deem it fit to grant any further opportunity for the same. Accordingly opportunity given for cross-examination of both said PWs is treated as NIL.

Now, the case stands adjourned for 15.03.2017 for remaining plaintiff evidence.”

The perusal of the impugned order shows that learned counsel for the defendant was not cross-examining the witnesses, who were appearing for the last five dates. But, if the cross-examination remains nil, the defendant would suffer loss because the statement will remain unchallenged on the record, which will cause great prejudice to the defendant. For the negligence of the counsel for the defendant that witnesses were not cross-examined for five dates, the defendant should not suffer. Otherwise also, it is settled law that right of the parties should be determined on merit as far as possible and substantial justice should be done between the parties and the Court should not go into the technicalities of law.

Keeping in view the above facts and in the interest of justice, one opportunity for cross-examining the witnesses is granted, subject to costs of ₹30,000/- to be paid by present petitioner-defendant to the plaintiff,

by way of demand draft. It is, however, made clear that when the witnesses come present in the Court, the defendant will be given only one effective opportunity to cross-examine them.

In view of the above observations, the present petition stands allowed.

As the main case is decided, therefore, civil misc. applications, if any, also stand disposed of.

May 11, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No