

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

CR No.3145 of 2018

Date of Decision : 28.08.2018

Nachhattar Singh

....Petitioner

VERSUS

Gurdeep Singh

...Respondent

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Vikas Garg, Advocate for the petitioner.

Mr. KBS Mann, Advocate for the respondent.

B.S. WALIA, JUDGE (ORAL)

1. Prayer is for setting aside order dated 13.04.2018 (Annexure P-2) passed by the learned Additional Civil Judge (Sr. Division), Gidderbaha dismissing the application filed by the petitioner under Order 18 Rule 17 read with Section 151 CPC. Further prayer is for grant of one opportunity to the petitioner-plaintiff to conclude his entire evidence as also to offer PWs for cross-examination.

2. Learned counsel for the petitioner fairly conceded that petitioner plaintiff's counsel was remiss in not offering PWs for cross-examination and further in closing evidence on 19.09.2017 after tendering some documents. Learned counsel contends that the petitioner was represented through counsel and was not informed by the counsel the implications with regard to non-presence of PWs as also of not offering them for cross-examination and that serious prejudice would be caused to the

petitioner in case cross-examination of the PWs was not permitted. Learned counsel prays for grant of one opportunity subject to imposition of such terms as to costs or otherwise as deemed appropriate by this Court in order to enable substantial justice to be done as otherwise the evidence led would be of no avail. Learned counsel states that in case one opportunity was granted, the petitioner would produce all his PWs for cross-examination on said date.

3. Learned counsel for the respondent has opposed the prayer of counsel for the petitioner. Learned counsel contends that numerous opportunities were availed by the petitioner whereafter, statement was made by the petitioner-plaintiff closing his evidence in the presence of counsel, therefore, no further opportunity was warranted.

4. I have considered the submissions of learned counsel for the parties.

5. Admittedly PWs were not produced on a number of dates for cross-examination. Thereafter, the petitioner-plaintiff closed his evidence by way of statement on 19.09.2017. Learned counsel for the petitioner by referring to the application which is not on the record contends that the application was moved under Order 18 Rule 17 read with Section 151 CPC on the ground that the cross-examination of PWs could not be conducted for one reason or the other and eventually evidence of the petitioner-plaintiff was closed by counsel in the mistaken belief that cross-examination of the plaintiff's witnesses had been conducted whereas the same had not been conducted and it was settled law that a party could not be made to suffer for the mistake of the counsel.

6. Prayer is for grant of one opportunity on the ground that in the absence of cross-examination of PW, the entire evidence led by the petitioner would be of no avail and in the circumstances the same would have serious consequences for the petitioner's claim in the civil suit. No doubt, the petitioner has been remiss in not ensuring the presence of the PWs for cross-examination besides in making a statement

closing the evidence on 19.9.2017. However, once the petitioner was represented by counsel, proper care was required to be exercised by the counsel before closing the evidence of the petitioner. The same not having been done, in case one opportunity is not granted to the petitioner to make available his PWs for cross-examination, the same would have serious consequences for the petitioner.

7. Accordingly, the impugned order is set aside. The learned Additional Civil Judge (Sr. Division), Gidderbaha shall provide one effective opportunity to the petitioner-plaintiff to produce PWs for cross-examination subject to payment of costs of ₹15,000/- by the petitioner-plaintiff to the respondent on or before the date fixed for the purpose.

8. Revision petition stands allowed in the aforementioned terms.

August 28, 2018
ps

(B.S. WALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No