

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

CR No.4334 of 2017

Ram Pal

....Petitioner

Versus

Tej Pal

....Respondent

Date of Order: 04.4.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Manoj Pundir, Advocate for the petitioner.

Mr. S.S. Dinarpur, Advocate for the respondent.

AMIT RAWAL, J (ORAL)

Present revision petition is directed against the impugned orders both dated 20.5.2017 (P.3 & P.5) whereby cross-examination of the plaintiff has been treated as “Nil. Opportunity given.”

Learned counsel for the petitioner submitted that the petitioner was present in the Court but his counsel could not appear at 10.00 AM for cross examination of the plaintiff and reached at 10.45 AM. He submitted that the application for recalling of the order was moved on the same day but the same was also dismissed. The trial Court has unnecessarily passed the impugned order in anguish commenting on the conduct of the counsel of the petitioner without any reason. He submitted that the impugned orders do not reflect any application of mind or compliance of principles of natural justice. The counsel was to come from Yamuna Nagar whereas the case was before the court at Bilaspur therefore the Court could not have been so harsh in this regard.

On the contrary, learned counsel for the respondent submitted that the conduct of the petitioner had not been appreciable as number of adjournments had been taken for the cross examination by adopting delaying tactics and thus the impugned orders have rightly been passed.

I have heard the learned counsel for the parties and perused the record carefully.

It would be apt to reproduce the impugned order, which reads as under:

“PW Tej Pal present. Though the defrendant Ram Pal is present but his counsel has no appeared despite vide order dated 19.05.2017 clear directions were given to appear before the court at 10.00 a.m Sharp. Ram Pal was given opportunity to cross-examination the witness but he has shown his inability and informed the court that he has telephoned his counsel and he will appear after some time. Heard. It is already 10.45 am and the learned counsel for the defendant has failed to put his appearance at the time given vide order dated 19.05.2017, so further wait is not justified and cross-examination of PW1 Tej Pal is recorded as nill opportunity given.

Plaintiff vide his separate statement after tendering on record Ex.P.1 to Ex.P13 closed the evidence. Now to come up on 07.07.2017 for DWs.”

“File taken up as the application for permission to cross-examination of the witness Tejpall and recalling the order dated 20.05.2017 has been moved. The perusal of the case file shows that on 19.05.2017 the court was constrained to note down act and conduct of the advocates and issued the

letter in that regard to President District Bar Association and on 19.05.2017 it was made clear to the parties that if at the time fixed any party will not appear then adverse order will be passed against that party. Instead of that the court has given 45 minutes extra to the defendant. The defendant though appeared himself but he did not secure presence of his counsel before the court. The duty of securing of the presence of the counsel before the court is always that of parties and that cannot be shifted to the court. The defendant alongwith his counsel is not only harassing the witness, the defendant is also wasting the time of the court also which has to pass different order at different time. The direction was given to the defendant and defendant was made clear that he and his counsel has to appear before the court on 20.05.2017 at 10 a.m sharp. But it was not done so hence, the present application stands dismissed with cost of Rs.200/- to be paid with SDLSC, Bilaspur. Now to come up on 07.07.2017 date already fixed for the purpose already fixed.”

On cumulative reading of the impugned orders, it is evident that the trial Court had been very harsh and reckless in taking away the opportunity of the defendant-petitioner to cross examine the witness of the plaintiff. In my view, the trial Court should have kept the matter pending and proceeded with another matter when it came to its notice that the counsel had been informed on telephone about the listing of the case.

Be that as it may, the bonafide of the petitioner is also writ large from the fact that the application for recalling of the order was submitted immediately but the same was also dismissed with costs of Rs.200/-. The exact cause, in my view, may be due to some other reason

but it should not have been reflected in the judicial orders.

In order to advance justice and prevent miscarriage of justice, I deem it appropriate to set aside the impugned orders.

Accordingly, the present petition is allowed. Impugned orders are quashed and one opportunity is given to the petitioner to cross examine the witness of the plaintiff on a date given by the court below.

April 04, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No