

IN THE PUNJAB AND HARYANA HIGH COURT
AT CHANDIGARH

Civil Revision No.4480 of 2018
Date of Decision : 17.07.2018

Resident Welfare Association Palam Vihar ...Petitioner

versus

Bhim Singh and others ...Respondents

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

Present :- Mr. Lalit Pathak, Advocate
for the petitioner.

B.S. Walia, J (Oral)

1. Prayer in this revision petition under Article 227 of the Constitution of India is for setting aside order dated 28.05.2018 (Annexure P-3) passed by the learned Civil Judge (Junior Division), Gurugram closing the rights of the plaintiff/petitioner to cross-examine DW-2 Bhim Singh.

2. Learned counsel contends that civil suit was filed by the petitioner/plaintiff Resident Welfare Association seeking permanent injunction for restraining the respondent/defendants from closing the passage linking their residential society with the main road which had been in existence for the past 15-20 years.

3. The impugned order was passed on 28.05.2018 closing the right of the petitioner/plaintiff to cross-examine DW-2 on the ground that on 21.04.2018, affidavit of DW-2 was taken on record but cross-

examination was deferred on request of counsel for the petitioner/plaintiff to 24.05.2018 on which date, again adjournment was sought by counsel for the petitioner/plaintiff and the case was adjourned to 28.05.2018 but since morning case had been taken up two-three times, DW-2 was present but his cross-examination could not be initiated due to non-availability of counsel for the petitioner/plaintiff and in view of it, being 3.40 p.m. and counsel for the petitioner/plaintiff not having appeared whereas, plaintiff had lodged his presence with the Reader, no further opportunity was warranted.

4. Learned counsel for the petitioner states that an unduly harsh order was passed against the petitioner Welfare Association and in fact counsel for the petitioner/plaintiff had appeared in the Court room of the learned Civil Judge (Junior Division), Gurugram two-three times during the course of the day but on account of other evidence in other cases being recorded, could not cross-examine DW-2.

5. Learned counsel states that one opportunity be granted to the petitioner/plaintiff to cross-examine DW-2 on such terms as to costs or otherwise as deemed appropriate by this Court failing which grave prejudice would be caused to the respondents Welfare Association thereby causing grave injustice to the interest of all the residents of the society.

6. I have considered the submissions of learned counsel for the petitioner and am of the view that in the circumstances, before resorting to the drastic step of closing the right of the petitioner/plaintiff by Court

order to cross-examine DW-2, one final opportunity if need be by imposing costs ought to have been granted for a short date. The same would have resulted in doing of substantial justice.

7. In view of the order proposed to be passed, I do not deem it necessary to issue notice to the respondents since issuing notice would merely delay the conclusion of the proceedings besides, would put the respondents to unnecessary expenses on account of having to engage counsel. Moreover, it has been brought to the notice of this Court that the evidence of the respondents/defendants has not yet been concluded and the case is now listed before the learned Civil Judge (Junior Division), Gurugram for 19.07.2018.

8. In the circumstances, impugned order dated 28.05.2018 is set aside. Petitioner/plaintiff shall be granted one effective opportunity to cross-examine DW-2 subject to payment of Rs.10,000/- as costs to the respondents as a condition precedent to be granting opportunity to cross-examine DW-2.

9. The revision petition is allowed in the aforementioned terms.

**(B.S. Walia)
JUDGE**

17.07.2018
Manpreet

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No