

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 5342 OF 2018(O&M)
Date of decision: 04.09.2018

Mohan Singh ... Petitioner
vs.
Richhpal Singh and ors. .. Respondents

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present:- Mr. Sanjay Verma, Advocate
for the petitioner.

Harinder Singh Sidhu, J.

The present revision petition has been filed impugning the order dated 14.11.2017 of learned Additional Civil Judge (Senior Division) Shahabad, whereby cross-examination of PW1 Rachhpal Singh was treated as 'NIL' and the order dated 27.07.2018 whereby the application of the petitioner for reviewing the order dated 14.11.2017 was dismissed.

In the impugned order while directing the cross-examination of PW1-Rachhpal Singh to be treated as 'NIL', learned trial Court had recorded that perusal of the case file reveals that several effective opportunities have been given to the defendants(petitioner) for cross-examination of PW1 Rachhpal Singh but they failed to cross-examine him despite availing sufficient opportunities.

Learned counsel for the petitioner states that it was only on 08.02.2017 and 14.11.2017 PW-1 Rachhpal Singh was present for cross-examination and was not cross-examined by the learned counsel for the petitioner. He referred the zimni orders, which are as under to substantiate his assertion:-

“Two Pws namely Harbans Singh Kaler and R.K. Bhardwaj are present and their examinations in chief recorded as PW-2 and PW3. Cross examinations of the said witnesses are deferred on the ground of the learned counsel for defendant. Heard and allowed. To come up

on 28.04.2017 for cross-examinations of PW2 and PW3.

Sd/-

ACJ(SD), Shahabad 8.3.2017.

No PW is present and examined. Adjournment sought by learned counsel for plaintiff. Heard and same is allowed. On request case is adjourned to 19.05.2017 for cross-examination of PW2 and PW3.

Sd/-

ACJ(SD), Shahabad 28.4.2017.

Cross-examination of PW-2 Harbans Singh and PW-3 R.K. Bhardwaj are present and examined. One another PW Rajesh Kalyan also present and examined as PW-4. Statement of Rajesh Kalyan Registry Clerk also recorded vide which he stated that he has received relevant record after evidence. His statement in this regard recorded separately. Now case is adjourned to 02.08.2017 for remaining evidence of plaintiff.

Sd/-

ACJ(SD), Shahabad 19.5.2017

File put up before me as learned SDJM is on casual leave.

Summons issued to PW Sudarshan Kalra received back duly served, but he is not present. Now the case is adjourned to 19.8.2017 for evidence of plaintiff at his own responsibility.

Sd/-

ACJ(SD), Shahabad 2.8.2017

PW4 Joginder Pal PW5 Sudershan present and examined. No other PW is present. Adjournment sought. Heard and the same is allowed. Now the case is adjourned to 19.09.2017 for remaining evidence of plaintiff at his own responsibility.

Sd/-

ACJ(SD), Shahabad 19.8.2017

PW-6 Iqbal Singh present, his examination-in-chief recorded but his cross-examination deferred on the request of learned counsel for the defendants No. 2 to 4. No other PW is present. Now the case is adjourned to 24.10.2017 for cross-examination of PW-6 as well as for remaining evidence of plaintiffs at their own responsibility.

Sd/-

ACJ(SD), Shahabad 19.9.2017

No evidence of plaintiff is present. Adjournment sought. Heard and same is allowed. Now the case is adjourned to 14.11.2017 for cross-examination of PW-6 as well as for remaining evidence of plaintiffs at their own responsibility.

Sd/-
ACJ(SD), Shahabad 24.10.2017.

Date of Order 14.11.2017

Next Date of hearing: after lunch

Present: Mr. J.R. Saini, counsel for the plaintiffs.
None for defendants No. 2 to 4.
Defendant No.1 proceeded against ex-parte
VOD 21.3.2016.

Case file taken up again after lunch. Case called after lunch several time but learned counsel for the defendants No. 2 to 4 again did not appear . Perusal of the case file reveals that several effective opportunities have been given to the defendants for cross-examination of PW-1 Rachpal but they failed to cross examine the abovesaid witness despite availing sufficient opportunities. It is already 3.30 PM. No more wait is justified. Accordingly, cross-examination of PW1 Rachhpal Singh be treated as 'NIL'. Now the case is adjourned to 5.12.2017 for cross-examination of PW6 Iqbal as well as for remaining evidence of plaintiffs at their own responsibility”

He states that cross-examination of PW-1 Rachhpal Singh is necessary for the just decision of the case, failing which a serious prejudice would be caused to him. He prays that the petitioner be given one opportunity to cross-examine him (PW Rachhpal Singh). He states that the case is fixed before the trial Court on 10.09.2018 and the petitioner can cross-examine PW1 Rachhpal Singh on that date.

Considering the facts and circumstances of the case, this petition is allowed. The impugned order dated 14.11.2017 to the extent of treating the cross-examination of PW1 Rachhpal Singh as 'NIL' is set aside.

The trial Court may grant one opportunity to the petitioner to cross-examine PW1 Rachhpal Singh. This shall be subject to payment of Rs.10,000/- as costs to the respondents.

04.09.2018
dinesh

(Harinder Singh Sidhu)
Judge

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