

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

**CR No.5772 of 2018
Date of Decision : 15.12.2018**

**M/s K.D International Marketing
Organization & anr.**

....Appellants

VERSUS

M/s Globe Rectifiers & anr.

...Respondents

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

Present: Mr. Chanakya Batta, Advocate for the petitioners.

Mr. Pranjal P. Chaudhary, Advocate for respondent No.1.

B.S. WALIA, JUDGE (ORAL)

1. Revision petition has been filed under Article 227 of the Constitution of India challenging order dated 14.8.2018 (Annexure P-1) passed by the learned Civil Judge (Sr. Division), Faridabad in Civil Suit No.86 of 2015 titled as Globe Rectifiers versus M/s K.D. International Marketing Organization ordering the cross-examination of plaintiff's witness PW-1 as Nil.

2. Learned counsel for the petitioner contends that the petitioner-defendant had been diligently proceeding with the case and had engaged senior counsel from Kolkata to conduct the case and the case had proceeded at a considerable pace and when the case was posted for plaintiff's evidence and cross-examination of plaintiff's witness PW-1 on 14.8.2018 request was made by the proxy counsel at Faridabad Court for an adjournment on the ground that the main counsel who was in possession of the documents was

ill because of severe pain due to pancreatitis which occurred in the morning of 11.8.2018 for which he had to go for medical treatment at the outpatient Department at the Kasturi Medical Centre Pvt. Ltd. and was treated by the concerned doctor at the hospital by Dr. Jaydeb Ray and was not in a state to move for a few days. Learned counsel contends that despite sufficient cause having been shown, request for adjournment was rejected and cross-examination of plaintiff's witness PW-1 was ordered to be treated as Nil vide impugned order dated 14.8.2018. Learned counsel for the petitioner states that although the aforementioned position was brought to the notice of the learned Civil Judge (Sr. Division), Faridabad yet medical record in support of the ailment of the counsel could not be produced on record due to shortage of time but the same has been attached alongwith the revision petition as Annexure P-2. Learned counsel contends that the petitioner cannot be said to have been negligent in any manner and it was only on account of the circumstances beyond the control of the petitioner-defendant that the cross-examination of PW-1 could not be conducted on the date of passing of the impugned order and in the circumstances, the petitioner could not be penalised on account of non-availability of counsel which too was on account of the circumstances beyond the control of the counsel since he was in severe pain on account of pancreatitis attack and therefore, could not appear on the date of passing of the impugned order.

3. Per contra, learned counsel for the respondent contends that although he does not dispute the reason given in view of the medical record attached alongwith as Annexure P-2 yet it was the third date for the cross-examination of PW-1 on the date when the impugned order was passed. He, however, states that he would not oppose the prayer for setting aside of the

impugned order and for granting one effective opportunity to the petitioner-defendant for cross-examination of PW-1 subject to imposition of costs.

4. I have considered the submissions of learned counsel for the parties and am of the view that on account of reason given i.e. the acute pain in which the conducting counsel was and therefore, could not appear in Court due to pancreatitis attack, one opportunity be granted to the petitioner-defendant to cross-examine PW-1 especially in view of the fact that on account of failure of the petitioner-defendant to cross-examine witness PW-1 grave prejudice would be caused to him.

5. Accordingly, revision petition is allowed. Impugned order dated 14.8.2018 is set aside. The petitioner-defendant is granted one effective opportunity to cross-examine PW-1 subject to payment of costs of ₹5,000/-.

December 15, 2018
ps

(B.S. WALIA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No