

CR No.5850 of 2018 (O&M)

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

**CR No.5850 of 2018 (O&M)
Date of decision : 25.10.2018**

SANJEEV KUMAR

....PETITIONER

V/S

RAJIV MISHRA & ANOTHER

....RESPONDENTS

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

Present: Mr. Rajan Bansal, Advocate
for petitioner.

None for respondent No.1/*despite service*.

Mr. Pankaj Katia, Advocate
for respondent No.2.

B.S. WALIA, JUDGE (ORAL)

[1] Challenge in the revision petition is to order dated 01.08.2018 (Annexure P-4), whereby the learned Civil Judge (Senior Division), Bathinda, dismissed the prayer of the petitioner to cross-examine witness DW-2, Sudhir Kumar.

[2] Learned counsel for petitioner/defendant No.2 contends that defendants evidence was closed with the result that DW-2 could not be cross-examined, whereupon the plaintiff approached this Court by way of Civil Revision No.8884 of 2017 and was granted one opportunity to cross-examine DW-2. Similar request was made by defendant No.2 before the learned trial Court but the same was denied by the learned Civil Judge (Senior Division),

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Bathinda on the ground that he had not approached the High Court unlike in the case of plaintiff.

[3] Learned counsel contends that a hyper technical approach had been adopted by the learned trial Court and that one opportunity be granted to cross-examine DW-2, failing which grave prejudice would be caused to the petitioner-defendant No.2.

[4] Per contra, learned counsel for respondent No.2/defendant No.1 states that he has no objection to the prayer of the petitioner, subject to imposition of costs.

[5] Faced with the aforementioned plea, learned counsel for the petitioner-defendant No.2 contends that in fact no opportunity whatsoever was granted to the petitioner-defendant No.2 to cross-examine DW-2.

[6] Learned counsel by referring to order dated 17.08.2017 contends that although DW-2 was not cross-examined yet the learned Civil Judge (Senior Division), Bathinda inadvertently recorded that DW-2 was present and had been cross-examined and that in the circumstances, the impugned order (Annexure P-4), declining opportunity to the petitioner-defendant No.2 to cross-examine DW-2 was legally unsustainable.

[7] I have considered the submissions of learned counsel for the parties and am of the view that once it is not disputed that on 17.08.2017, DW-2 had not been cross-examined and, therefore, no opportunity whatsoever had been provided to the petitioner-defendant No.2 to cross-examine DW-2 then in said circumstances, the order passed by the learned Civil Judge (Senior Division), Bathinda is legally unsustainable. Even otherwise learned counsel for respondent No.2/defendant No.1 has no objection to be cross-examined

though subject to payment of costs. However, I am of the view that in the

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circumstances, since the petitioner was not granted an opportunity to cross-examine DW-2, the impugned order being legally unsustainable is liable to set aside and is accordingly set aside. Petitioner-defendant No.2 shall be granted one effective opportunity to cross-examine DW-2.

[8] Revision petition is **allowed** in the aforementioned terms.

(B.S. WALIA)
JUDGE

October 25, 2018

rajneesh

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No