

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

Civil Revision No.5942 of 2017 (O&M)
Decided on:-February 15, 2018.

Radha Rani and others

.....Petitioners.

Versus

Savita Sharma and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Sachit Kaushal, Advocate
for the petitioners.

Mr. Jagpal Singh, Advocate for
Mr. M.S. Bains, Advocate for respondent No.4.

HARI PAL VERMA, J.

The petitioners have filed present revision petition under Article 227 of the Constitution of India for setting aside the order dated 05.05.2017 (Annexure P-1) passed by learned Civil Judge (Junior Division), Ludhiana, whereby the cross-examination of AW1 Sarabjit Singh was treated as nil and the case was adjourned for remaining evidence of the respondent No.4-applicant.

Challenge has also been laid to the order dated 20.07.2017 (Annexure P-2) passed by learned Civil Judge (Junior Division), Ludhiana, whereby the application filed by the petitioners for recalling of the order dated 05.05.2017 and to afford an opportunity to cross-examine AW1 Sarabjit Singh was dismissed and the order dated 05.05.2017 was allowed to be maintained.

Learned counsel for the petitioners has argued that vide order dated 05.05.2017, learned civil Court has observed that the petitioners (plaintiffs in the suit) are not interested in cross-examination of AW1 Sarabjit Singh on the ground that as many as five opportunities were granted to the petitioners to cross-examine AW1 Sarabjit Singh. Similarly, the order dated 20.07.2017, whereby the petitioners have moved an application to recall the order dated 05.05.2017 was dismissed reiterating that AW1 Sarabjit Singh remained present in the Court on five different occasions, but was not cross-examined by the petitioner-plaintiffs.

Learned counsel for the petitioner-plaintiffs has pointed that the petitioners had filed a suit for declaration and permanent injunction bearing CS No.424 dated 19.11.2012 against the respondent-defendants. The said suit was decreed *ex parte* against the respondent-defendants vide judgment and decree dated 28.09.2015 passed by the civil Court. After passing of the *ex parte* decree dated 28.09.2015, respondent No.4-defendant Bhagwinder Pal Singh filed an application under Order IX Rule 13 read with Section 151 CPC for setting aside the judgment and decree dated 28.09.2015 and it is in those proceedings, the impugned order has been passed.

On the other hand, learned counsel for respondent-defendant No.4 has argued that the petitioners were given ample opportunities to cross-examine AW1 Sarabjit Singh, but they failed to do so. In fact, after getting the *ex parte* decree, they intended to delay the proceedings and, therefore, there is no illegality in the impugned orders dated 05.05.2017 and 20.07.2017 passed by learned civil Court.

I have heard learned counsel for the parties and perused the various zimni orders, as attached with the paper book.

The record reveals that in the proceedings pending for setting aside the *ex parte* judgment and decree dated 28.09.2015, the case was fixed for 13.10.2016 for evidence of AW1 Sarabjit Singh on which date, affidavit of AW1 was tendered and the case was adjourned to 04.11.2016 for his cross-examination. However, on 04.11.2016, the said AW was not present and accordingly, on the request of the respondent-defendant No.4, the case was adjourned to 28.11.2016 for evidence/cross-examination of AW1 Sarabjit Singh, but that was made a last opportunity. Thereafter, the case was listed on 15.12.2016, but as AW1 Sarabjit Singh, who was to be cross-examined, was not feeling well, the case was adjourned to 20.01.2017. Thereafter, on 20.01.2017 and 20.02.2017, when the case was listed before the civil Court, the same was adjourned as AW1, though was present, but could not be cross-examined by the petitioners. Thereafter, the case was listed on 08.03.2017. On that day, AW1 Sarabjit Singh was not present and accordingly, the case was adjourned to 12.04.2017. Subsequently, when the case was listed for hearing on 12.04.2017, though AW1 was present, but he was not cross-examined and the case was adjourned to 05.05.2017 for cross-examination of AW1. It was on 05.05.2017, when the case was listed before the civil Court, the Court had shown its satisfaction that the petitioners are not interested in cross-examination of AW1 Sarabjit Singh and, therefore, cross-examination of this witnesses was treated as nil and the case was adjourned for evidence of the remaining witnesses. The order dated 05.05.2017 was sought to be

recalled but vide order dated 20.07.2017, the said application was dismissed. Various zimni orders as detailed hereinabove show that virtually, the petitioners were granted four opportunities and not five opportunities, as projected in the impugned order. On different occasions, either there was a request on behalf of the respondent-defendant or the AW1 was not feeling well. Therefore, on the strength of the aforesaid order, and in order to maintain a balance between the parties, this Court finds that the orders dated 05.05.2017 and 20.07.2017 deserves to be set aside.

Accordingly, the impugned orders dated 05.05.2017 and 20.07.2017 passed by the civil Court are set aside and the present petition is allowed. The petitioners are afforded one more opportunity to cross-examine AW1 Sarabjit Singh.

During the course of arguments, it has been pointed out by learned counsel for the petitioners that the case is fixed before the civil Court on 26.02.2018. Thus, the civil Court shall allow cross-examination of AW1 Sarabjit Singh on 26.02.2018 or any other date convenient to the Court. However, this opportunity would be subject to cost of Rs.5,000/- to be deposited with the District Legal Services Authority, Ludhiana.

Since the present civil revision has been decided on merits, no order is required to be passed in the miscellaneous applications.

February 15, 2018

Yag Dutt

**(HARI PAL VERMA)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No