

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

CR No.6150 of 2018
Date of decision: 13.09.2018

Ashok Kumar .. Petitioner

vs.

Preeti Wadhwa .. Respondent

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present:- Mr. Sunil Garg, Advocate
for the petitioner.

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Harinder Singh Sidhu, J.

This revision petition has been filed impugning the order dated 10.08.2018 passed by learned Additional Civil Judge (Sr. Division), Phagwara to the extent that cross-examination of PW-1-Balkrishan Wadhwa was treated as nil.

The petitioner is defendant in the suit for possession filed by the respondent. It is the case of the petitioner that affidavit of PW-1-Balkrishan Wadhwa was tendered on 06.07.2018. Thereafter, the case was adjourned to 30.07.2018. On that date PW-1-Balkrishan Wadhwa was not present. Instead he moved an application for exemption. Thereafter, the case was adjourned to 10.08.2018 for his cross-examination. On that date due to some family problem, the counsel for the petitioner could not cross-examine PW-1-Balkrishan Wadhwa, whereupon learned Court passed the impugned order that the cross-examination of PW-1 be treated as nil.

Learned counsel for the petitioner contends that in fact 10.08.2018 was the first opportunity for the petitioner to cross-examine PW-1. But on account of the fact that mother of counsel for the petitioner had expired some time back he was not able to cross-examine him. He

thereby contends that failure to cross-examine PW-1 was not intentional but was on account of unavoidable circumstances. Accordingly, he prays that petitioner be granted one opportunity to cross-examine PW-1. Learned counsel for the petitioner has placed on record the Zimni orders from 19.07.2017 to 10.08.2018, which show that most of the adjournments have been sought by the plaintiff and not by the petitioner defendant. The relevant extracts of the zimni orders from 19.07.2017 to 10.08.2018, are as under:

“Preeti Wadhwa Vs. Ashok Kumar CS-4507-13

Present: Sh. V.K. Sharma, Adv for plaintiff

Sh. Himanshu Prashar, Adv for defendant

No plaintiff witness is presented. A date is requested.

On request, case is adjourned to 03.08.2017 for entire evidence of the plaintiff.

Dated: 19.07.2017

Present: Sh. V.K. Sharma, Adv for plaintiff

Sh. Himanshu Prashar, Adv for defendant

No plaintiff witness is presented. A date is requested.

On request, case is adjourned to 10.08.2017 for entire evidence of the plaintiff.

Dated: 03.08.2017

Present: Sh. V.K. Sharma, Adv for plaintiff

Sh. Himanshu Prashar, Adv for defendant

File taken up today as I was on leave on 10.08.2017.

On request, case is adjourned to 24.08.2017 for entire evidence of the plaintiff.

Dated: 11.08.2017

Present: Counsel for the parties.

Papers taken up today as I was on medical leave from 21.08.2017 to 25.08.2017, 26.08.2017 & 27.08.2017 being holiday. File has been sent to the appellate Court. The same be awaited till 14.09.2017.

Dated: 28.08.2017

Present: Sh. V.K. Sharma, Advocate counsel for plaintiff

Sh. Himanshu Prashar, counsel for defendant

No PW is present or served. An adjournment is requested by the Ld. Counsel for the plaintiff, which is granted in the interest of justice. Case is adjourned to 06.12.2017 for evidence of plaintiff, at own responsibility.

Dated: 06.10.2017

Present: Sh. V.K. Sharma, Advocate counsel for plaintiff

Sh. Himanshu Prashar, counsel for defendant

No PW is present or served. At the request of Ld. Counsel for the plaintiff, case is adjourned to 07.02.2018 for evidence of plaintiff, at own responsibility.

Dated: 06.12.2017

Present: None.

File taken up today as there is holiday on 31.01.2018 on the occasion of Guru Ravi Dass Jayanti and the undersigned is availing earned leave from 1.2.2018 to 9.2.2018 and. As such, case is adjourned to 12.3.2018 for the purpose already fixed. Both the parties be informed accordingly.

Dated: 30.01.2018

Present: Sh. V.K. Sharma, counsel for plaintiff.

Sh. Himanshu Prashar, counsel for defendant.

No PW is present. Ld counsel for plaintiff stated at bar that he wants to examine Bal Krishan Wadhwa. He is directed to supply the copy of affidavit of above witness well in advance to the ld. Counsel for the defendant. Now to come up on 11.05.2018 for evidence of Bal Krishan Wadhwa.

Dated: 12.03.2018

Present: Sh. V.K. Sharma, counsel for plaintiff.

Sh. Himanshu Prashar, counsel for defendant.

File taken up today as 11.05.2018 was declared as local holiday and 12.05.2018 & 13.05.2018 being second Saturday and Sunday respectively. No PW is present. At the request of Ld counsel for plaintiff case stands adjourned to 06.07.2018 for evidence of Bal Krishan Wadhwa.

Dated: 14.05.2018

Present: Sh. V.K. Sharma, counsel for plaintiff.

Sh. Manmohan Singh, ld. Proxy counsel for defendant.

One witness Balkrishan Wadhwan (PW-1) present and examined in chief by way of affidavit. His cross-examination is deferred on request of ld. Proxy counsel for the defendant. At the request of ld. Proxy counsel for the defendant, case stands adjourned to 30.07.2018 for cross-examination of PW-1 Balkrishan Wadhwan and for documentary evidence. It shall be last opportunity.

Dated: 06.07.2018

Present: Sh. Rajeev Sharma, Advocate for plaintiff.

Sh. H. Prashar, Advocate for defendant.

Today case was fixed for cross-examination of PW-1 Balkrishan Wadhwan but his exemption has been moved. In view of the contents mentioned in the application, his personal appearance is exempted for today only and he is bound and appear on 10.08.2018 for his cross-examination and for documentary evidence. At the request of Ld. Proxy counsel for the plaintiff, last opportunity granted to the plaintiff is further extended in the interest of justice.

Dated: 30.07.2018

The zimni orders substantiate the contentions of learned counsel for the petitioner.

Considering the aforesaid , this petition is allowed. The order dated 10.08.2018 to the extent that cross-examination of PW-1-Balkrishan Wadhwa is treated as nil is quashed. Learned Trial Court to grant one effective opportunity to the petitioner cross-examine PW-1.

13.09.2018
Atul

(Harinder Singh Sidhu)
Judge

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No