

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

**CR No.7861 of 2015 (O&M)
Date of decision : May 16, 2018**

Harjiwan Singh and others Petitioners

Versus

Zora Singh and others Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. S.S. Rang, Advocate for the petitioners.

Mr. Satbir Rathore, Advocate for

Mr. M.S. Kang, Advocate for respondent Nos.3 to 9.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

CM-24736-CII-2015

Application is allowed as prayed for.

Main Case

Impugned in the present revision petition is the order dated 06.11.2015 (Annexure P-1) passed by learned Addl. Civil Judge (Sr. Divn.), Budhlada, vide which an opportunity to examine Makhan Singh as DW was declined and the evidence of the defendants was closed by orders.

Heard.

A perusal of the impugned order shows that on the said date, it was pleaded that DW4, who was examined-in-chief was won over by the opposite party. Therefore, now the defendants qua issue No.6A and 6B want to examine Makhan Singh as DW.

It also comes out that on the same date i.e. 06.11.2015, an application was filed by the defendants to tender the affidavit of Makhan Singh in evidence. The application was supported by an affidavit of DW Makhan Singh.

The trial Court took the view that the defendants were granted two effective opportunities to lead evidence on issue Nos.6-A and 6-B. Vide order dated 08.09.2015. The defendants had exhausted the said two opportunities. Therefore, their evidence qua issue Nos.6A and 6B was closed by orders.

Learned counsel for respondent Nos.3 to 9 states that respondent Nos.3 to 9 are not the contesting respondents. Respondent Nos.1 and 2 have not turned up to oppose the petition.

It comes out that on the said date, DW4 was not examined on account of the fact that he was won over by the opposite party but the affidavit of Makhan Singh was sought to be filed and he was to be submitted for cross-examination.

I am of the view that it is prerogative to the defendants to examine any witness, if one of their witnesses has been won over after his examination-in-chief, the defendants are at liberty to produce other witness in his place. Then the affidavit of the said witness is sought to be filed. The trial Court could not refuse to accept the same and close the evidence by orders.

Therefore, the impugned order is set aside and the defendants are given one opportunity to tender affidavit of Makhan Singh and submit him for cross-examination.

As such, the present revision petition is allowed.

(KULDIP SINGH)
JUDGE

May 16, 2018

sarita

Whether speaking / reasoned Yes

Whether Reportable: No