

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

**CM-5492-CII-of 2018 in/&
Civil Revision No.927 of 2018(O&M)
Date of Decision: 23.03.2018**

Shinda Singh & others

....Petitioner (s)

Versus

Kuljit Kaur

...Respondent(s)

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

Present:- Mr. Rajesh Sabharwal, Advocate
for the petitioner(s).

HARI PAL VERMA, J. (Oral)

Petitioner-defendants have filed the present revision petition under Article 227 of the Constitution of India for setting aside the orders dated 10.10.2017 and 24.01.2018 passed by Additional Civil Judge (Sr. Divn.), Dasuya. Vide order dated 10.10.2017, after examination of PW-1 Kuljit Kaur, the evidence of the plaintiff was closed and no opportunity was afforded to counsel for the petitioner-defendants to cross-examine PW-1 Kuljit Kaur and further, vide order dated 24.01.2018, the application moved by the petitioner-defendants for recalling of order dated 10.10.2017 was dismissed.

Briefly stated, respondent-plaintiff has filed a suit for permanent injunction against the petitioner-defendants, restraining them, their agents, representatives, attorneys etc. from interfering in the lawfully

established and peaceful possession of the plaintiff-respondent, illegally, forcibly and not to dispossess the plaintiff by encroaching over the land, as detailed in the plaint. While the case was fixed for plaintiffs' evidence, on 10.10.2017, learned civil court closed the evidence of the plaintiff after examination of PW-1 Kuljit Kaur and adjourned the case for 24.10.2017 for defence evidence.

Learned counsel for the petitioner states that on 10.10.2017, counsel for the petitioner-defendants could not appear before the Civil Court in the pre-lunch session, as he was busy before some other Court. Even though the defendants were present in Court in the pre-lunch session and he also appeared in the post-lunch session, however, the evidence of the plaintiff was closed after examination of PW-1 Kuljit Kaur and the case was adjourned to 24.10.2017. Thereafter, the petitioner-defendants moved an application for recalling of order dated 10.10.2017, so as to cross-examine the sole witness PW-1 Kuljit Kaur, however, the same was dismissed vide order dated 24.10.2017. Learned counsel further submits that the case is still at the initial stage and defence evidence is yet to start. He prays for one more opportunity to cross-examine PW-1 Kuljit Kaur, for which, he is ready to compensate the plaintiffs adequately.

I have heard learned counsel for petitioner and perused the impugned orders.

Having recourse to Article 227 of the Constitution of India, in order to meet the ends of justice, this Court finds that the petitioner-defendants deserve one more opportunity to cross-examine the sole witness PW-1 Kuljit Kaur., however, subject to payment of costs. The petitioner-

defendants have virtually been afforded only one opportunity i.e. on 10.10.2017, the date when their counsel could not come present.

Accordingly, the present petition is allowed, impugned orders dated 10.10.2017 and 24.01.2018 are set aside and the petitioner-defendants are afforded one more opportunity to cross-examine PW-1 Kuljit Kaur, subject to payment of costs of Rs.5,000/-, which shall be paid to the respondent-plaintiff before start of cross-examination of PW-1 Kuljit Kaur.

The present petition has been disposed of, at this stage, without issuing any notice to the respondent-plaintiff for the reason that in case notice is issued to the respondent, it will further delay the proceedings. Moreover, the respondent is being adequately compensated.

March 23, 2018
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No