

CR No.4502 of 2018
Date of Decision:16.07.2019

RAWAIL SINGH

...Petitioner

Versus

MANPREET KAUR

..Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Atul Jain, Advocate
for the petitioner.Mr. Bhavyadeep Walia, Advocate
for the respondent.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 18.05.2018 passed by the Civil Judge (Junior Division), Patiala (for short- the Trial Court) through which, subject to payment of costs, the application filed by the respondent, seeking permission to cross examine PW-1 Rawail Singh, has been allowed.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition, are that on 12.09.2014, the petitioner filed a suit seeking therein to challenge sale deed dated 05.07.2005 allegedly executed by the petitioner in favour of the respondent regarding house No.36-F, Rattan Nagar, Tripuri Town, Patiala (for short- the suit property). *Inter alia*, the case set up by the petitioner was that the sale deed in question was a result of fraud having been played by the respondent

upon him and the same was also without any consideration. Therefore, the same was liable to be set aside. Injunction to restrain the respondent from interfering in the petitioner's possession of the suit property was also sought. The detail grounds on which the petitioner had preferred his suit, being not relevant for the purpose of deciding the present petition, are not being referred to.

On issuance of notice, the respondent, who was the defendant in the suit, appeared before the Trial Court and filed a written statement to which the petitioner filed a replication. Thereafter, the Trial Court framed issues.

On 01.07.2015, the petitioner while appearing as his sole witness, tendered his affidavit in his examination-in-chief and on 23.07.2015, opportunity was granted by the Trial Court to the respondent to cross examine the petitioner-plaintiff but the respondent failed to do so. Thereafter on 27.08.2015 another opportunity was granted to the respondent to cross examine the petitioner-plaintiff but again to no avail . That being so, cross examination of the petitioner-plaintiff was ordered to be treated as Nil. Thereafter, the petitioner tendered all the documents that he intended to rely upon and on 16.05.2015 his evidence was ordered to be closed.

Thereafter, for the respondent to lead her evidence, the Trial Court adjourned the matter for different dates being 30.11.2015, 19.12.2015 and 03.02.2016. However, no evidence was led by the respondent on 30.11.2015 and 19.12.2015. On 03.02.2016 not only did the respondent fail to lead any evidence but she also absented from the Court proceedings resulting in the passing of the order by the Trial Court to proceed against

her *ex parte*. On 24.08.2016, the respondent filed an application for setting aside the *ex parte* proceedings which was dismissed in default on 05.12.2016. Thereafter, she again moved an application for setting aside the *ex parte* proceedings against her which was dismissed on 29.9.2017. Thereafter, the respondent filed another application which was allowed on 24.01.2018 and resultantly, the *ex parte* proceedings ordered against her on 03.02.2016 were set aside. The suit was then adjourned to 08.02.2018 to enable the respondent to lead her evidence but to no avail. Thereafter, while adjourning the matter to 20.02.2018 another opportunity was granted to her to lead her evidence on which date, instead of leading her evidence, an application was preferred by the respondent seeking therein to recall PW-1 Rawail Singh for his cross examination which has been allowed by the Trial Court through the order which is under challenge in the present proceedings.

Learned counsel for the parties have been heard.

A perusal of the the above facts clearly depicts the casual and callous approach of the respondent through which she successfully delayed the decision of the petitioner's suit. She was granted as many as five effective opportunities to lead her evidence which she did not avail of. Further, she absented herself from the proceedings for which she was ordered to be proceed against *ex parte*. Thereafter, an application was filed by her for setting aside of the *ex parte* proceedings in which she again absented herself leading to dismissal of the same for non prosecution.

Through the order impugned in the present proceedings, the Trial Court has permitted the respondent to cross examine PW-1 Rawail

Singh who had been examined-in-chief on 01.07.2015, apparently for the reason that in case, such an opportunity is not granted to the respondent, the suit filed against her would be allowed without contest. For her conduct she had been burdened of costs of ₹1,500/-.

For the reasons given by the Trial Court in the impugned order with which this Court concurs as also keeping in view the fact that in case the respondent is not granted an opportunity to cross examine the only witness produced by the petitioner-plaintiff, the suit filed against her would virtually be allowed in default, by taking a rather lenient view in the matter, the impugned order is not interfered with.

However, the costs imposed by the Trial Court upon the respondent are found to be too meager and the same are enhanced to ₹30,000/-. The Trial Court shall ensure that the costs imposed through the present order are transferred to the bank account of the petitioner.

The petition is disposed of in the above terms.

Since the petitioner's suit has been pending from 12.09.2014 and the delay in its disposal has been contributed mostly by the respondent, the Trial Court is directed to make every endeavour to finally adjudicate upon the petitioner's suit expeditiously but not beyond three months from the receipt of a copy of this order.

July 16, 2019

Jyoti-IV

(DEEPAK SIBAL)
JUDGE

Whether speaking/reasoned Yes/No Whether Reportable Yes/No