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

**Civil Revision No.7844 of 2016
Date of Decision: 27.02.2019**

Jaspal Rana and another Petitioners

Vs

Mohinder Tiwari Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Amandeep Saini, Advocate
for the petitioners.

Mr. D.S. Randhawa, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioners have preferred this revision petition against the order dated 12.09.2016 and 04.10.2016 passed by the Civil Judge (Jr. Divn.) Ludhiana wherein the opportunity to cross-examine PW-1 was treated to be nil.

[2]. Plaintiff/respondent filed a suit for permanent injunction restraining the defendants/petitioners from obstructing, demolishing and encroaching upon *Thada* in front of house of the plaintiff. Plaintiff was examined on 12.09.2016 and the case was adjourned to 23.09.2016 for remaining plaintiff's evidence. In due course the case came up for consideration before the

trial Court on 04.10.2016 and it was recorded that no PW was present and the case was adjourned to 13.10.2016 for cross-examination of PW-1 and for remaining evidence of the plaintiff subject to last opportunity. Thereafter, the said order was reconsidered on the same very day and it was found that the *zimni* order earlier passed on 04.10.2016 was inadvertently passed. In fact, evidence of PW-1 Mohinder Tiwari was completed on 12.09.2016 and the opportunity for cross-examination of PW-1 Mohinder Tiwari was treated as nil. Thereafter order dated 04.10.2016 was passed to the following effect:-

“Present:-Sh. Vijay Saggar, Adv. Counsel for plaintiffs.

Sh. Harbhajan Dass, Adv. Counsel for defendant.

At this stage it has come to my notice that in the zimini order of today, inadvertently the case is fixed for cross examination of PW1 Mohinder Tiwari instead of fixing the case for remaining evidence of plaintiff, as the evidence of plaintiff PW1 Mohinder Tiwari has been completed on dated 12.09.2016 and the opportunity for cross-examination of PW1 Mohinder Tewari was treated as nil. Considering the said mistakes as an outcome of inadvertence or typographic in nature, I hereby rectify the previous Zimini order today and on request of Ld. Counsel for plaintiff, fix the case for 13.10.2016 for remaining PW's, subject to last opportunity. It is made clear that no further opportunity will be granted to the plaintiff for the said purpose.

Sd/-

Dr. Sushil Bodh

CJJD, LDH 04.10.2016”

[3]. At the time of issuance of notice of motion on

22.11.2016, following order was passed:-

“Learned counsel for the petitioners contends that examination-in-chief of PW1 Mohinder Tiwari was done on 27.07.2016. The witness was never cross-examined, however, in the order dated 12.09.2016, it was inadvertently mentioned that PW1 was examined and the case was adjourned for remaining evidence of the plaintiff. The aforesaid mistake was corrected in the interlocutory order dated 04.10.2016 where the case was adjourned for 13.10.2016 for cross-examination of PW1 and for remaining evidence. Again in the order of even date, trial Court reiterated the earlier version thereby showing that PW1 Mohinder Tiwari was completely examined on 12.09.2016.

Learned counsel further contends that there is no interlocutory order showing cross-examination of PW1 and showing the same to be nil.

Notice of motion for 17.01.2017.

Till the next date of hearing, trial Court may not pass final order.”

[4]. Perusal of the record would show that the order dated 12.09.2016 as reproduced in Annexure P-1 would not show any such incriminating fact as pleaded in the order dated 04.10.2016. Examination-in-chief of PW-1 Mohinder Tiwari was conducted on 27.07.2016, but the witness was never cross-examined. In the order dated 12.09.2016 it was inadvertently recorded that PW-1 was examined completely and the case was adjourned for remaining evidence of the plaintiff. The said mistake was however corrected in the order dated 04.10.2016, when the case was adjourned to 13.10.2016 for cross-examination of PW-1 and for remaining evidence of the plaintiff.

Again vide order of even date, the trial Court reiterated the earlier version thereby treating PW-1 Mohinder Tiwari to be completely examined on 12.09.2016. In my considered opinion the aforesaid anomalous situation cannot be appreciated, particularly when there is no interlocutory order showing cross-examination of PW-1 and also showing the same to be nil.

[5]. After hearing learned counsel for the parties, I find that the aforesaid factual matrix cannot be disputed with reference to any material on record. Consequently, I deem it appropriate to set aside the impugned orders. This revision petition is allowed and the impugned orders dated 12.09.2016 and 04.10.2016 passed by the Civil Judge (Jr. Divn.) Ludhiana are set aside. Trial Court is directed to proceed in accordance with law. Normal consequences to follow.

February 27, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No