

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

**CR No.830 of 2019 (O&M)
Date of Decision : 27.2.2019**

Pushpinder Singh.

....Petitioner

VERSUS

Raghvir Singh @ Raghbir Singh and another

...Respondents

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Munish Puri, Advocate for the petitioner.

Respondents exparte.

B.S. WALIA, JUDGE (ORAL)

1. Revision petition has been filed by petitioner-defendant No.2 challenging order dated 8.10.2018 (Annexure P-4) to the extent of treating cross-examination as Nil in Civil Suit/52/2016 titled as Raghvir Singh @ Raghbir Singh versus Naina Devi & anr as also order dated 26.11.2018 (Annexure P-6) dismissing the application under Order 18 Rule 17 read with Section 151 CPC.

2. Brief facts of the case leading to the filing of the revision petition are that vide order dated 08.10.2018, cross-examination of PW's H.S. Naru and Raghbir Singh was ordered to be treated as Nil by recording that although said witnesses were present since morning but counsel for petitioner-defendant No.2 had not turned up despite message having been sent

to counsel for defendant No.2 and since it was already 4.15 P.M., therefore the Court was of the view that defendant No.2 did not want to cross-examine the witnesses. Thereafter, application dated 23.10.2018 was filed under Order 18 Rule 17 read with Section 151 CPC for allowing/permitting the applicant-petitioner-defendant No.2 to cross-examine witnesses Raghbir Singh and H.S. Naru on the ground that issues had been framed on 10.1.2017 where after numerous opportunities were given to the plaintiff-respondent to conclude his evidence and even costs were imposed upon him but he failed to conclude his evidence. Learned counsel for the petitioner relied upon the dates given in the application under Order 18 Rule 17 CPC to contend that on 5.4.2017, 10.5.2017, 14.7.2017, 17.11.2017, 11.12.2017, 30.1.2018, 13.3.2018, 7.4.2018, 23.4.2018, 15.5.2018, 30.5.2018, 9.7.2018, 1.8.2018, 1.9.2018, 24.9.2019, no PW's were present and that PWs Raghbir and H.S. Naru were examined on 24.4.2017 but their cross-examination was deferred as they were not present on the dates as mentioned above and PW-H.S. Naru appeared after 24.4.2017 for cross-examination only on 8.10.2018 while plaintiff Raghbir Singh appeared on 1.11.2017 but requested for adjournment and again on 23.4.2018 he appeared and was partly examined-in-chief as his examination-in-chief was not complete on 24.4.2017. Thereafter, Raghbir Singh appeared only on 8.10.2018.

3. Learned counsel contended that after the framing of issues the learned trial Court granted 19 effective opportunities to the plaintiff-respondent to conclude his entire evidence out of 26 dates on which the case was listed but the respondent-plaintiff failed to conclude his evidence as per the order of the trial Court and the petitioner-defendant No.2 and his counsel

appeared before the trial Court on 8.10.2018 during the morning session to cross-examine the plaintiff's witness but the plaintiff's witnesses were not present in Court till lunch time and after lunch time, counsel for petitioner-defendant No.2 was busy in the Court of Ms.Gurjit Kaur Dhillon, PCS, ASJSD, Pathankot for cross-examination of a witness in case titled as Gurbachan versus Bodh Raj, consequently had no knowledge that the plaintiff-Raghubir Singh and his witness namely H.S. Naru had appeared before the learned trial Court for cross-examination. Learned counsel contended that it was due to the aforementioned reason that the plaintiff's witness could not be cross-examined by the counsel for petitioner-defendant No.2. Learned counsel further contended that although it had been mentioned by the learned trial Court in order dated 8.10.2018 that message was sent to the counsel for petitioner-defendant No.2 but the same was not to the knowledge of the petitioner-defendant No.2 or his counsel since counsel for the petitioner-defendant No.2 was busy in cross-examination of a witness in another Court in case titled as Gurbachan versus Bodh Raj and did not get any message.

4. In the aforementioned circumstances, learned counsel contended that the impugned orders are legally unsustainable.

5. Despite notice, none put in appearance on behalf of the respondents. Accordingly, they were proceeded ex parte vide order dated 21.02.2019.

6. I have considered the submissions of learned counsel for the petitioner.

7. A perusal of the impugned order reveals that the learned trial Court was of the view that numerous opportunities had been granted to cross-examine the witnesses present on 8.10.2018 and message was also sent to learned counsel as apparent from zimni order dated 8.10.2018 but still neither petitioner-defendant No.2 nor his counsel nor anybody from his office appeared before the Court for giving any explanation for non-appearance and non cross-examination of the witnesses. Therefore, the Court declared the cross-examination of the plaintiff's witnesses as Nil as petitioner-defendant No.2 failed to cross-examine the witnesses when they were present and had made the witnesses wait for the entire, day besides, the application appeared to have been filed to delay the proceedings and to cover up the lacunae left on account of non examination of the witnesses.

8. However, the fact remains that the learned trial Court was indulgent to the extent of granting 19 opportunities to the respondent-plaintiff to lead evidence. Besides, the plaintiff's witnesses appeared after a gap of more than 1 year for cross-examination. In the circumstances, one opportunity could have been granted by the learned trial Court to petitioner-defendant No.2 to cross-examine PWs H.S. Naru and Raghubir Singh subject to payment of costs instead of treating the cross-examination of aforesaid witnesses as Nil and as also in dismissing the application under Order 18 Rule 17 CPC especially in view of the stand of petitioner-defendant No.2 that his counsel had appeared before the learned trial Court but the PWs were not present for cross-examination till lunch time where after counsel was busy in the Court of Ms.Gurjit Kaur Dhillon, PCS, ASJ(SD) for the cross-examination of another witness in case titled as Gurbachan Singh versus Bodh

Raj. No doubt, some person ought to have appeared before the learned trial court to inform the learned trial Court of the inability of the counsel to cross-examine the PWs post lunch because of involvement in another Court. However, in order to do substantial justice, it is deemed appropriate to set aside the impugned orders and grant one effective opportunity to the petitioner-defendant No.2 to cross-examine PWs H.S.Naru and Raghubir Singh. However, the same is subject to payment of costs of Rs.5,000/- to the respondent-plaintiff. In case of failure to make payment of costs, the impugned orders shall stand confirmed. Learned trial court to grant opportunity to the petitioner-defendant No.2 to cross-examine PWs H.S.Naru and Raghubir Singh on production of certified copy of the order and payment of costs in the manner indicated above.

9. Revision petition allowed in aforementioned terms.

February 27, 2019
ps

(B.S. WALIA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No