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

CR No. 1336 of 2019

Date of Decision: 28.02.2019

Balwinder Singh Malhi and another

-Petitioners

Vs

Rajinder Singh Bath

-Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Satnam Preet Singh, Advocate,
for the petitioners.

Mr. Divanshu Jain, Advocate,
for the caveator-respondent.

RAJ MOHAN SINGH, J.

Petitioners have preferred this revision petition against the order dated 22.01.2019 passed by Civil Judge (Junior Division), SAS Nagar, Mohali vide which application filed by the petitioners to recall the plaintiff for cross-examination was dismissed.

Plaintiff- Rajinder Singh Bath filed a suit for mandatory injunction and for future mesne profit.

Defendants-petitioners filed an application under Order 7 Rule 11 CPC for rejection of plaint on the ground that the plaint was under valued. The said application was dismissed by the trial Court against which Civil Revision No.7665 of 2016

was filed in the High Court.

Notice of motion was issued on 16.11.2016 and in the meanwhile, trial Court was directed to adjourn the case beyond the date fixed by the High Court. Thereafter, the interim order was not continued on 07.02.2017 and 27.10.2017.

Vide order dated 31.10.2017, on the request of learned counsel for the petitioners, the case was ordered to be listed on 06.11.2017 and interim directions were made to continue till then.

It is relevant to state here that when the interim order was not extended after 10.01.2017 till 31.10.2017, the trial Court fixed the case for evidence of the defendants for 4.02.2017, 27.02.2017, 01.04.2017, 18.04.2017, 25.04.2017, 15.05.2017, 18.05.2017, 11.07.2017, 31.07.2017 and 05.09.2017. Defendants-petitioners kept on filing applications for adjournment for awaiting orders from the High Court but the said applications were dismissed by the trial Court. Ultimately, when no evidence was produced by the defendants on 05.09.2017, trial Court closed the evidence of the defendants by order of the Court dated 05.09.2017 and fixed the case for evidence of the plaintiff.

The aforesaid revision petition came up for hearing on 09.11.2017 before this Court. Petitioner No.1- Balwinder

Singh Malhi appeared in person and stated that his counsel Mr. A.S. Bakshi, Advocate was not well. He sought some time for engaging some other Advocate.

Learned counsel for the respondent submitted that the plaintiff- Rajinder Singh Bath had come from London and he had to go back to London on 15.11.2017. The case was fixed before the trial Court on 09.11.2017 itself.

In view of peculiar facts and circumstances of the case, trial Court was directed to examine and cross-examine the respondent before 15.11.2017 so as to facilitate him to go back to London. The case was accordingly adjourned to 12.12.2017 for arguments.

Petitioners sought to get order dated 09.11.2017 recalled by way of moving CM No.24298-CII of 2017 and the same was dismissed as not pressed vide order dated 20.11.2017. Till the next date of hearing, trial Court was directed not to pass final order.

Perusal of order dated 31.10.2017 passed by Civil Judge (Junior Division), SAS Nagar, Mohali would show that PW1- Rajinder Singh Bath and PW2- Charanjit Singh were present and were examined in chief. Their cross-examinations were deferred at the request of learned counsel for the defendants. The case was adjourned to 09.11.2017 for cross-

examination of PW1- plaintiff and PW2- Charanjit Singh. Thereafter, on 09.11.2017, the case was adjourned to 10.11.2017 for cross-examination of PW1 and PW2 as no PW was present. On 10.11.2017, PW2 was not cross-examined due to non-availability of learned counsel for the defendants. The case was adjourned to 13.11.2017 for cross-examination of PW1 and PW2. Learned counsel for both the parties were directed to appear in the case at 11.30 AM sharp on the date fixed. Thereafter, an application was filed by the defendants for adjournment of the case till disposal of Civil Revision No.7665 of 2016 pending in the High Court. The said application was dismissed and the learned counsel for the defendants was directed to cross-examine PW1- Rajinder Singh bath as per directions of the High Court. Both the learned counsel for the parties were directed to appear for cross-examination of PW1 at 10.00 AM sharp on 14.11.2017. On 14.11.2017 also, an application was filed for adjournment of the case till disposal of Civil Revision No.7665 of 2016.

Plaintiff contested the application.

On 14.11.2017, the trial Court passed the first order to the effect that the case was listed at Serial No.06 in the cause list of the Court. The case was called at 10.00 AM sharp as per earlier direction issued on 13.11.2017. PW1- Rajinder Singh

Bath was present along with his counsel but the defendants neither in person nor their counsel were present. The case was ordered to be taken up at 11.30 AM for awaiting presence of the defendants along with their counsel. Again the case was taken up at 11.30 AM but despite the presence of PW1, learned counsel for the defendants did not turn up and a request for pass over was made by proxy counsel on behalf of learned counsel for the defendants. The case was ordered to be put up at 12.30 PM for awaiting presence of the defendants along with their counsel. Again the case was called. PW1 was present along with counsel for his cross-examination but an application was filed by the defendants for adjournment till disposal of Civil Revision No.7665 of 2016. The case was again called at 12.30 PM. The Court in its order recorded that plaintiff has come from London and he was to go back on 15.11.2017.

In view of attending facts and circumstances of the case, cross-examination of the plaintiff was treated to be nil at the instance of the defendants. The order dated 14.11.2017 treating the cross-examination of PW1 to be nil at the instance of the defendants was never challenged by the petitioners. On the adjourned date i.e. 30.11.2017, defendants absented from the Court without any prior intimation. The case was called several times since morning. At 4.20 PM, defendants were

proceeded against exparte and the case was adjourned to 14.12.2017 for exparte evidence of the plaintiff. On 14.12.2017, an application was filed for setting aside exparte order dated 30.11.2017. The application was allowed, subject to payment of cost of Rs.500/- and the case was adjourned to 21.12.2017 for evidence of the plaintiff. On 21.12.2017, the case was further adjourned to 09.01.2018 for cross-examination of PW5 and PW6. Remaining PWs (if any) were also ordered to be produced on the next date i.e. 09.01.2018. On 09.01.2018, PW5 and PW6 were not cross-examined by the defendants and the case was further adjourned to 18.01.2018, 30.01.2018 and 15.02.2018, the date on which evidence of the plaintiff in affirmative was closed and the case was adjourned for arguments on 27.02.2018.

During the intervening period, Civil Revision No.7665 of 2016 was dismissed by the High Court on 20.02.2018. Against the order dated 05.09.2017, Civil Revision No.8652 of 2017 was filed. The said revision petition was disposed of vide order dated 20.02.2018 thereby setting aside the order dated 05.09.2017 passed by Civil Judge (Junior Division), SAS Nagar, Mohali and the defendants were granted one more opportunity to conclude their evidence by producing all the witnesses on their own responsibility by taking summons *dasti*, subject to

payment of costs of Rs.5000/- to be paid to the plaintiff. Thereafter, Civil Revision No.3640 of 2018 came to be filed against the order dated 22.03.2018 passed by Civil Judge (Junior Division), SAS Nagar, Mohali whereby evidence of the defendants was closed by order.

This Court vide order dated 29.05.2018 issued notice of motion and in the meanwhile, trial Court was directed to adjourn the proceedings beyond the date fixed in the revision petition. The revision petition was disposed of by reviving one opportunity to the defendants-petitioners to serve the summoned witnesses again. In the event of their non-appearance, the Court was directed to act in accordance with law.

The aforesaid history is being noticed to appreciate the conduct of the petitioners in not cross-examining the plaintiff when he was in India. The order passed by this Court was sought to be flouted on many occasions by filing number of applications for adjournment and by not cross-examining the plaintiff despite specific order dated 09.11.2017 passed by this Court in Civil Revision No.7665 of 2016.

Now the petitioners have filed this revision petition against the order dated 22.01.2019 passed by Civil Judge (Junior Division), SAS Nagar, Mohali vide which prayer for re-

calling of plaintiff for cross-examination has been dismissed by the trial Court.

While deciding Civil Revision No.8652 of 2017, petitioners were given one opportunity to conclude their entire evidence on their own responsibility, subject to payment of costs. In Civil Revision No.3640 of 2018, the said opportunity was ordered to be revived in order to serve the summoned witnesses by the petitioners.

Having failed to avail the concession given by the High Court in the facts and circumstances of the case of the earlier revision petitions, I do not see any justification to interfere the impugned order passed by the trial Court.

This revision petition is accordingly, dismissed.

28.02.2019
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No