

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

**CR no.1323 of 2019 (O&M)
Date of Decision: 02.04.2019**

Boota Singh

...Petitioner

Vs.

Gurjit Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Amardeep Singh, Advocate, for the petitioner.

Mr. Gurbir Singh Pannu, Advocate, for the respondents.

Amol Rattan Singh, J (Oral)

On February 26, 2019, the following order had been passed by
this Court:-

“By this petition, the petitioner challenges the order of the learned Civil Judge (Junior Division), SBS Nagar, dated 07.09.2018, by which the evidence of the petitioner (plaintiff in the suit), has been closed, because as recorded in the order, despite 22 effective opportunities having been availed of by the petitioner, he had not concluded it.

Learned counsel for the petitioner submits that other than the fact that the cross-examination of PW-1 was not conducted when it was supposed to be conducted, in the year 2017, and instead PW-3 was cross-examined, defendant no. 2 had also been proceeded against *ex parte*, with his application for recalling of that order allowed on 03.05.2018, after which he filed his statement on 19.07.2018.

He submits that therefore the petitioner may be granted one opportunity to examine his remaining witness.

As to why the petitioner has taken almost six

months to approach this Court against the aforesaid impugned order, he submits that since there were “talks of a compromise” going on between the parties, the delay occurred.

Without making any comment on the aforesaid contentions on their actual merits, since only one witness remains to be examined, notice of motion be issued to the respondents, returnable on 12.03.2019.

In the meanwhile, the trial Court would adjourn the matter to a date beyond that given by this Court.

Process **dasti** only, with permission to serve the respondents also through counsel appearing for them before the trial Court, which as per the impugned order is Sh. H.S. Kundra, Advocate.

Naturally, if this petition is to be eventually allowed after hearing the respondents defendants, it would be only on payment of adequate costs to them, including litigation expenses for dragging them to this Court, even in the aforesaid circumstances.

To be shown in the urgent motion list.”

Today, learned counsel for the respondents reiterates what has been stated by the trial court, that 22 opportunities having been granted to the petitioner to conclude his evidence but he not having done so, there is no equity in his favour and therefore the present petition deserves to be dismissed.

Having considered the matter though I agree with the learned counsel appearing for the respondents as also what is stated in the impugned order, but keeping in view the fact that PW-3 has already been cross-examined, with PW-1 partly cross-examined (though PW-2 is still to be cross-examined), the present petition is allowed subject to payment of costs

of Rs.20,000/- to the respondents, with the petitioner to produce his witnesses to subject them to cross-examination as and when summoned by the trial court. Further, subject to the time taken by the respondents/counsel for the respondents to cross-examine the said witnesses, not more than 3 opportunities shall be granted to the petitioner to produce those witnesses within a period of two months.

02.04.2019
vcgarg/dinesh

(Amol Rattan Singh)
Judge

Whether speaking/reasoned : Yes
Whether reportable : Yes