

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

Sr. No.117

C.R. No.1819 of 2019

Date of decision: 18.03.2019

Gurjant Singh

....Petitioner

versus

Sahil Goyal

....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Baltej Singh Sidhu, Advocate
for the petitioner.

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DEEPAK SIBAL, J. (Oral)

The present petition is directed against the order dated 29.01.2019 passed by the Additional Civil Judge (Senior Division) Gidderbaha, (for short – the Trial Court) dismissing an application filed by the petitioner to recall PW-3 Hardev Singh for further cross-examination.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that in the year 2014 the respondent filed a suit seeking therein specific performance of agreement to sell dated 16.12.2011 pertaining to land measuring 7 kanals 11 marlas i.e 151/1530 share of land measuring 102 kanals 15 marlas in khewat No.66 situated in the revenue limits of village Mann, Tehsil Malout, District Sri Muktsar Sahib (for short – the suit property). In the alternative recovery of Rs.6,00,000/- was prayed for. Permanent injunction to restrain the

petitioner-defendant from alienating the suit property was also sought. On being put to notice, the petitioner, who was the defendant in the suit, appeared before the Trial Court and filed his written statement. Thereafter, the Trial Court framed issues on which both parties led their evidence. When the matter was listed for final arguments, the petitioner filed an application seeking to recall PW-3 Hardev Singh for further cross-examination primarily on the ground that the aforesaid witness had earlier been cross-examined by one Sh. P.C. Garg, Advocate, who had not been engaged by him. Such application was dismissed by the Trial Court occasioning the filing of the present petition.

Learned counsel for the petitioner has been heard.

Way back in the year 2014 the respondent filed his suit seeking therein specific performance of agreement to sell dated 16.12.2011. Upon notice, the petitioner, who was the defendant in the suit, appeared before the Trial Court and filed his written statement through which he refuted the respondent's claim. The Trial Court framed issues on 09.03.2015. Thereafter, the respondent led his entire evidence in the course of which on 26.05.2016 PW-3 Hardev Singh was examined-in-chief and cross-examined on 02.07.2016. After the respondent had closed his evidence and the petitioner had availed as many as 17 opportunities to lead his evidence, on 14.11.2018, an application was filed on his behalf seeking therein to recall PW-3 Hardev Singh for his further cross-examination.

The above facts reveal that the petitioner seeks to recall PW-3 Hardev Singh about two and a half years after he had been examined and that too at the stage when the suit is ripe for final arguments.

The reason given by the petitioner to recall PW-3 Hardev Singh

is that in his examination-in-chief PW-3 Hardev Singh had produced his affidavit which comprised of two pages as also another page which was attached to the affidavit. Qua the contents of the third page attached with the two page affidavit of PW-3 Hardev Singh, he had not been cross-examined by the petitioner.

As observed earlier, PW-3 Hardev Singh was examined on 26.05.2016 and cross-examined on 02.07.2016. The affidavit filed by him in his examination-in-chief as also the page attached thereto was admittedly on the record since the afore-referred dates. For about two and a half years, the petitioner and his counsel slept. For such delay and negligence, it is only the petitioner who should suffer.

The submission made by learned counsel for the petitioner that PW-3 Hardev Singh was earlier cross-examined by Sh. P.C. Garg, Advocate, who had not been engaged by the petitioner also needs to be rejected on the ground of delay as the order dated 02.07.2016 clearly reveals the name of the counsel who had cross-examined PW-3 Hardev Singh. Further, there is no evidence produced by the petitioner that Sh. P.C. Garg, Advocate, was never authorized by Sh. Gopal Baghla, Advocate, whom the petitioner had admittedly engaged.

The allegations of fraud having been played by the petitioner's earlier counsel namely Sh. Gopal Baghla, Advocate, on the ground that Sh. Gopal Baghla, Advocate had appearing for the respondent in one of the criminal matters in which the respondent was involved also does not merit acceptance for the reason that such fact is not found pleaded in the application filed before the Trial Court as also in view of the admission made before this Court that it was Sh. Gopal Baghla, Advocate who had

cross-examined the other two witnesses namely PW-1 Sahil Goyal and PW-2 Om Parkash and such cross-examination done by him was to the petitioner's satisfaction.

Dismissed.

(DEEPAK SIBAL)
JUDGE

March 18, 2019
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No