

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 3513 of 2019 (O&M)

Date of decision : 22.10.2019

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Mohita Arora and another

.....Petitioners

vs.

Sanjay Narang

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Shiv Kumar, Advocate for the petitioners.

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H. S. Madaan, J. (Oral)

In a civil suit titled 'Sanjay Narang vs. Mohita Arora etc.', pending before Civil Judge (Senior Division), Faridabad, on 26.3.2019, one PW Sanjay was present in the Court, but his cross examination could not be conducted, since learned counsel for the defendants had not put in appearance there. Observing that witness was appearing in the Court for the last three dates, but he was not cross examined by learned counsel for the defendants, therefore, cross examination of PW Sanjay was treated as Nil and was closed by order. The case was adjourned for evidence of the defendants, by the trial Court.

Feeling aggrieved, the defendants have approached this

Court by way of filing the present revision petition, notice of which was given to the respondent, who was duly served, but had not appeared to offer a contest.

I have heard learned counsel for the petitioners, besides going through the record.

Learned counsel for the revisionists-defendants has contended that the observation of the trial Court that the witness was appearing in the Court for the last three dates but had not been cross examined is factually wrong. He has taken me to the copy of the interim orders reproduced in the grounds of revision, from where it transpires that PW Sanjay had appeared in the Court on 4.9.2018 and had tendered his affidavit. His cross examination was deferred at the request of learned counsel for the defendants. However, on the adjourned dates i.e. 11.10.2018, 20.12.2018 and 15.2.2019, his presence is not shown to be marked. If that is so, then the trial Court obviously made wrong observation in that regard. Nevertheless, there appears to be some lapse on the part of defendants also, since he could not ensure the availability of his counsel in the Court to cross examine PW Sanjay when he had appeared in the Court to face cross examination.

In my view, the defendant would be greatly prejudiced if cross examination of PW Sanjay is allowed to remain as Nil and that may result in miscarriage of justice. The ends of justice demand that the defendant should be given one opportunity to cross examine PW Sanjay, of course he will be burdened with costs for causing delay in the trial. No prejudice is going to be caused to the plaintiff in any

manner.

Therefore, the order under revision is set aside subject to payment of Rs.5,000/- as costs, to be paid by the revisionists-defendants to the plaintiff. The trial Court would fix a date for recording cross examination of PW Sanjay and afford an opportunity to the counsel for the defendants to conduct his cross examination. Payment of costs would be a condition precedent for permitting the defendant to cross examine such witness. The request for further adjournment for the purpose made on behalf of the defendants shall not be allowed in any case.

With such observations, the revision petition stands disposed of.

22.10.2019
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(H.S. Madaan)
Judge

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