

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

CR No.5112 of 2019 (O&M)

Date of decision: 27.08.2019

Roopwati and others

....Petitioners

Versus

Jamil Ahamad

....Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Namit Khurana, Advocate,
for the petitioners.

RITU BAHRI J. (Oral)

Challenge in this petition is to the order dated 28.05.2019 (Annexure P-6) passed by the Additional Civil Judge (Senior Division), Yamuna Nagar at Jagadhri, whereby application filed by defendant-petitioners for recalling the order dated 09.12.2016 (Annexure P-3) has been dismissed.

Plaintiff-respondent (Jamil Ahamad) filed a suit for possession by way of specific performance of agreement to sell dated 30.03.2010. During the pendency of trial, vide impugned order dated 09.12.2016 (Annexure P-3), trial Court had discharged two witnesses of the plaintiff-respondent namely Zamil and Tara without affording effective opportunity to defendants-petitioners to cross-examine them.

Learned counsel for the petitioners contends that immediately after passing of the order dated 09.12.2016 (Annexure P-3), defendants (petitioners) had made an application dated 23.01.2017 (Annexure P-4) for recalling of the said order. There was no delay on the part of the defendants

in moving the application. However, this application has now been

dismissed by the trial Court vide order dated 28.05.2019 (Annexure P-6).

A perusal of the impugned order dated 28.05.2019 (Annexure P-6) shows that affidavits of two witnesses namely Zamil and Tara were tendered into evidence before the trial Court on 05.09.2016. They could not be cross-examined by the defendants from 05.09.2016 till 09.12.2016. Keeping in view that the defendants (petitioners) had taken three months to cross-examine those witnesses, they were discharged vide order dated 09.12.2016 and application for recalling of the said order was made without any delay on the part of the defendants.

In the given circumstances of the case, to impart complete justice to the parties and also to avoid deprivation of full opportunity to the petitioners (defendants), this Court deems it appropriate to provide some time to the petitioners (defendants) to cross-examine the above named witnesses of the plaintiff.

In view of the above, impugned orders dated 28.05.2019 (Annexure P-6) & 09.12.2016 (Annexure P-3) are set aside and trial Court is directed to provide one effective opportunity to the defendants-petitioners to cross-examine witnesses of the plaintiff namely Zamil and Tara, subject to payment of costs of Rs.5000/- to be deposited with the District Legal Service Authority, Yamuna Nagar.

Allowed accordingly.

(RITU BAHRI)
JUDGE

27.08.2019
ajp

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