

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 222 of 2018 (O&M)

Date of Decision: 12.02.2020

Raj Kumar Gupta

... Petitioner(s)

Versus

Amar Singh alias Amarjit Singh

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. Liaqat Ali, Advocate
for the petitioner(s).

Mr. Naveen Sharma, Advocate
for the respondent.

Anil Kshetarpal, J.

The present revision petition has been filed by the defendant against the order passed by the learned trial Court dated 13.11.2017, which reads as under:-

*“Present: Sh. S.S.Heer Adv, counsel for the plaintiff.
Sh. Amandeep Singh, counsel for the defendant.*

*PW-1 Amar Singh is present but no cross
examined. His cross-examination treated as nil as Ld. Counsel
for the defendant did not avail it inspite opportunity give to it.
No other plaintiff evidence is present. Now to come up o
16.11.2017 for the plaintiff evidence.*

Date of Order: 13.11.2017

*Sd/- Manpreet Kaur
Civil Judge Junior Division
Ludhiana.
UID PB NO. 0367”*

The plaintiff has filed a suit for grant of decree of declaration to
the effect that the agreement to sell dated 27.10.2010 with regard to

immovable property has no legal value with a further prayer to grant decree of permanent injunction restraining the defendant from interfering in the peaceful possession of the plaintiff. Issues were framed by the Court on 28.02.2014 and thereafter, the case was fixed for 17.04.2014 giving an opportunity to the plaintiff to produce its evidence. It was directed that the list of witnesses, process fee and diet money be deposited within seven days. On 08.07.2014 the plaintiff did not produce any evidence. The case was adjourned to 16.09.2014 on which date of hearing, the Presiding Officer was on leave, therefore, the case was adjourned to 28.11.2014. No PW was present on 28.11.2014, hence, the case was adjourned to 22.04.2015. In fact, on 28.11.2014 there are two orders passed by the Court, one records that no PW is present, whereas in the second order, it has been recorded that PW.1 has appeared and tendered his affidavit in lieu of examination-in-chief. Both the orders dated 28.11.2014 are extracted as under:-

*“Present: Sh. SS Heer, Adv for the plaintiff.
Sh. Amandeep Singh, Adv for the defendant.*

No PW is present today. Two opportunities have already been availed by the plaintiff to conclude his evidence. On request, case is adjourned to 22.4.2015 for evidence of the plaintiff. PWs be produced on the date fixed.

Sd/- Pratima Arora, CJJD, 28.11.2014”

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At this stage, PW1 examined in their evidence by way of affidavit Ex.PA. Copy supplied. Now case is adjourned to 22.4.2015 for cross-examination of PW.1.

Sd/- Pratima Arora, CJJD, 28.11.2014”

On the adjourned date i.e. 22.04.2015, again there are two orders. In the first order, it has been recorded that PW.1 is not present for cross-examination. However, in the second order, it was recorded on the same date that PW.1 is present but learned counsel for the defendant is not available, therefore, his cross-examination is treated as “NIL”. Both the orders dated 22.04.2015 are extracted as under:-

*“Present: Sh. SS Heer, Adv for the plaintiff.
Sh. Amandeep Singh, Adv for the defendant.*

PW1 is not present for cross-examination. On request, case is adjourned to 21.7.2015 for cross examination of PW1. PW1 be produced on the date fixed.

Sd/- Pratima Arora, CJJD, 22.4.2015”

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At this stage, PW1 Amar Singh, present for cross examination. Let the other counsel be called for. PW1 not cross examined as counsel for the defendant not available. His cross examination treated as nil. Opportunity given. Now case is adjourned to 21.7.2015 for remaining evidence of plaintiff.

Sd/- Pratima Arora, CJJD, 22.4.2015”

The defendant filed an application for recall of the order dated 22.04.2015. Thereafter, the defendant was proceeded against *ex parte* which was set aside on 06.09.2017. The defendant filed an application for direction to the plaintiff to produce original documents, which was allowed by the Court on 28.09.2017.

The case was adjourned to 25.10.2017 when, on the application

08.11.2017, no evidence of the plaintiff was present and the case was adjourned to 13.11.2017. On 13.11.2017, the impugned order was passed.

Learned counsel for the petitioner submits that Amar Singh PW.1 is the plaintiff in the suit and if his evidence goes unchallenged, the defendant would suffer serious prejudice.

On the other hand, learned counsel for the plaintiff has submitted that the defendant has already delayed the trial of the suit. Hence, he submitted that any opportunity should not be granted to the defendant.

On consideration of the matter, this Court is of the considered view that although the conduct of the defendant is not appreciable, however, the Courts have been constituted to do substantive justice while avoiding technicalities.

Keeping in view the aforesaid position, this Court is of the considered view that let one opportunity be granted to the defendant to cross-examine the plaintiff, subject to payment of costs of Rs.20,000/- which shall be payable by way of demand draft to the plaintiff before the defendant is granted an opportunity to cross-examine the witness. Hence, the present revision petition is allowed. The miscellaneous application(s), if any, shall also stand disposed of.

(Anil Kshetarpal)
Judge

February 12, 2020
“DK”

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