

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

-.-

CR No. 1003 of 2020 (O&M)

Date of decision: 12.02.2020

Mahant Harish Pathak

.....Petitioner

Versus

Narinder Kumar and another

.....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Ms Sonia Saini, Advocate
for the petitioner

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Rekha Mittal, J. (Oral)

Challenge in the present petition has been directed against order dated 09.01.2020 passed by the Civil Judge (Junior Division), Garhshankar whereby application under Order 18 Rule 17 read with Section 151 of the Code of Civil Procedure for recalling DW2 along with his witnesses for cross examination has been dismissed.

Counsel for the petitioner would argue that though Yogesh Kumar (DW1) and Mahant Lachman Dass (DW2) were examined-in-chief on 20.08.2019 and they were not cross examined by counsel for the petitioner despite opportunity granted for the purpose but as non- cross examination of the aforesaid witnesses would be of serious consequence for the petitioner/plaintiff, he may be allowed one effective opportunity to cross examine aforesaid witnesses, may be subject to payment of reasonable costs.

Another submission made by counsel is that on 24.10.2019, the date on which cross examination of DW1 and DW2 was treated as 'nil',

counsel for the petitioner before the trial Court was not available as he had gone abroad, therefore, the petitioner should not be allowed to suffer because of failure of his counsel to ensure his presence for cross examination of aforesaid witnesses. The last submission made by counsel is that even if decision of the suit has been delayed on account of failure of counsel of the petitioner to cross examine the aforesaid witnesses at an appropriate stage of proceedings, the same would be of consequence for the petitioner and defendants/respondents can well be compensated with costs for failure to cross examine the witnesses at an appropriate stage.

Perusal of *zimini* orders reproduced in grounds of revision would reveal that the petitioner closed his evidence on 17.07.2019 and the case was adjourned to 01.08.2019 for evidence of the respondent/defendant. The trial Court adjourned the case for short dates from 01.08.2019 to 16.08.2019, 16.08.2019 to 20.08.2019, 20.08.2019 to 29.08.2019, 29.08.2019 to 14.09.2019. On 29.08.2019, it has been noticed that counsel for the parties stated at Bar that there are chances of compromise and file be put up before the Lok Adalat on 14.09.2019. Eventually, cross examination of DW1 and DW2 was treated as 'nil' on 24.10.2019, on which date, proxy counsel appeared for the petitioner. No doubt, the Court adjourned the case on number of occasions to enable the petitioner to cross examine DW1 and DW2 but his counsel failed to do so. However, in case the witnesses are not cross examined by the petitioner, their testimonies would be accepted on its face value and may be of serious consequence for the petitioner. The rules of procedure are handmaid of administration of justice meant for enhancing substantial justice and not thwarting the same. Nothing has been mentioned in the impugned order that the witnesses were not cross examined by

counsel for the petitioner because of some *mala fide*. In the given circumstances, interest of justice commands that the petitioner should be allowed one effective opportunity to cross examine DW1 and DW2 subject to payment of costs of Rs.5,000/- to each of the witnesses by way of demand draft to be tendered before starting their cross examination.

In view of what has been discussed hereinbefore, the petition stands disposed of. The impugned order is set aside. The petitioner is given one effective opportunity to cross examine DW1 and DW2 subject to payment of costs. The petitioner shall complete cross examination of aforesaid witnesses in a single sitting i.e. the date they appeared in the Court for the purpose. In case, the petitioner fails to cross examine either of the aforesaid witnesses, their cross examination treated as 'nil' would stand affirmed.

Before parting with this order, it is clarified that the petition has been disposed of without notice to the respondents in order to save them from unnecessary expense and inconvenience. The respondents would be at liberty to file an application before this Court if they have any grievance to express.

(Rekha Mittal)
Judge

12.02.2020
Mohan Bimbora

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