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CR No. 1299 of 2020
Date of decision : 27.2.2020

Narinder Pal KaurRespondent

Present : Mr. Rajiv Kataria, Advocate and
Ms. Deepshikha Arora, Advocate, for the petitioners

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This petition has been filed by the defendants in the original suit, challenging the order dated 5.2.2020, passed by Civil Judge (Junior Division), Kharar, vide which their right to cross examine the witness PW2, has been struck off.

It is contended by learned counsel for the petitioners/defendants that earlier the petitioners were proceeded ex parte. However, vide order dated 22.1.2020, the said order was set aside subject to payment of Rs.1000/-as costs. Thereafter, the case was fixed for 29.1.2020. However, on that date, none of the sides was present. Accordingly, the case was adjourned for 5.2.2020. On that date, the defendant produced the receipt of having deposited the costs. The plaintiff/respondent had produced the witness PW2, who was examined in chief. However, he could not be cross-examined on that day because the counsel for the petitioners could not reach to Court in time to cross-examine PW2. A request was made for short adjournment . However, the same was declined and the impugned order was passed. Still further, it is submitted that the case is still at the stage of evidence of the plaintiff. Therefore, no prejudice would be caused to the plaintiff in case the petitioners are permitted to cross-

examine PW-2.

Having heard learned counsel for the petitioners and having perused the file, this Court finds that the case was fixed for 5.2.2020. The case was taken up 4 times on the said date. However, the petitioners/defendants did not ensure the cross examination of the witness PW2. Hence, per se, there is no illegality or irregularity with the order passed by the trial Court. However, the other aspect of the matter is that the cross-examination of that witness could have been conducted only by the counsel for the petitioners and not by the petitioners themselves. Although, the case was taken up 4 times on the same day, however, if the counsel could not reach the Court on that day, it would not be appropriate to make the petitioners visit with the drastic consequences of denying them the right to cross-examine the witness. Accordingly, it would not be unjustified if the petitioners are granted opportunity to cross-examine the witness PW-2, however, by putting them to an appropriate financial burden.

In view of the above, the present petition is allowed with a direction to the trial Court to grant one effective opportunity to the petitioners/defendants to cross-examine PW-2, subject to payment of Rs.7000/- as costs, to be deposited with the Institute for the Blinds, Sector 26, Chandigarh, within a period of 2 weeks.

However, it is clarified that the petitioners shall be granted the above said opportunity only after they produces the receipt of having deposited the costs as mentioned above.

(RAJBIR SEHRAWAT)
JUDGE

27.2.2020

Ashwani

ASHWANI KUMAR
2020.02.28 16:20
I attest to the accuracy and
integrity of this document

Speaking/Reasoned : Yes/No
Reportable : Yes/No