

122 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 2387 of 2020

Date of Decision:16.10.2020

SHASHI PRABHA

...Petitioner

Versus

BALWINDER KAUR AND ANOTHER

..Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Jagjit Singh Chatrath, Advocate for the petitioner.

HARNARESH SINGH GILL, J. (ORAL)

Case is taken up for hearing through video conferencing.

Instant civil revision has been filed under Article 227 of the Constitution for setting aside the order dated 17.01.2020 (Annexure P-4) passed by the learned Civil Judge (Jr. Divn.), Kharar, whereby cross-examination of respondent No.1-plaintiff was ordered to be treated as 'Nil'.

Shorn of unnecessary details, the facts giving rise to the present petition are to the effect that respondent No.1-plaintiff filed a suit for rescission of agreement to sell dated 06.10.2017 with regard to Flat No.138/6, Block D-2, Acme Heights-I, Sector 126, Chajju Majra, Tehsil Kharar, District SAS Nagar, with consequential relief of permanent injunction.

On pleadings of parties, issues were framed. Respondent No.1-plaintiff was afforded opportunity to lead evidence. On 31.05.2019, the plaintiff appeared as PW 1 and tendered into evidence her duly sworn affidavit Ex.PW 1/A, but her cross-examination was deferred on the request

of learned counsel for the defendant. On 20.09.2019, the plaintiff also appeared but could not be cross-examined and the case was adjourned on the request of learned counsel for defendant No.1(petitioner herein). On 22.11.2019, learned counsel for the petitioner/defendant No.1 made an application for adjourning the case. On that date, no PW was present and the case was adjourned to 12.12.2019 for cross-examination of PW 1, treating the same as last opportunity. On 12.12.2019, PW 1 Balwinder Kaur was present, but could not be cross-examined and on the request of learned counsel for defendant No.1(petitioner), the case was adjourned to 17.01.2020 for cross-examination of PW 1, subject to last opportunity and costs of Rs.2,000/- to be deposited in the legal aid by defendant No.1.

Notice of motion is not being issued to the respondents to prevent the delay of trial and to defray the costs of litigation.

I have heard the learned counsel for the petitioner.

Learned counsel for the petitioner draws the attention of this Court towards the zimni orders passed by the trial Court w.e.f. 30.07.2018 to 28.05.2019 which show that PW 1 Balwinder Kaur(respondent No.1) did not appear before the trial Court. The position remained the same on the various subsequent dates. He further submits that on 17.01.2020, Mr. Vijay Agnihotri, Advocate, for defendant No.1(petitioner herein) requested for an adjournment due to his personal difficulty, which had been declined and cross-examination of PW 1 had been deemed as opportunity given 'Nil'. He also points out that case before the trial Court is fixed for 03.12.2020 for the cross-examination of PWs 2 to 4.

I have considered the contentions of learned counsel for the

petitioner.

It is settled by various decisions of the Hon'ble Apex Court as well as High Courts that the courts should be liberal in granting the prayer sought unless serious injustice or irreparable loss is likely to be caused to the other side or that the prayer sought is not a *bona fide* one. Moreover, the rules of procedure are intended to be handmaiden to the administration of justice. A party cannot be refused the just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The petitioner cannot be made to suffer for not cross-examining PW 1 because the same is necessary for the just decision of the suit.

In view of the above, the impugned order dated 17.01.2020 is set aside and one effective opportunity is granted to the petitioner to cross-examine PW 1 Balwinder Kaur, subject to costs of Rs.10,000/- to be deposited with the Bar Association of this Court. In case she is not cross-examined by the learned counsel for the petitioner, the trial Court will pass an appropriate order. It is also made clear that respondent No.1 shall make all endeavours to appear on the said date for her cross-examination.

Disposed of in the aforementioned terms.

(HARNARESH SINGH GILL)
JUDGE

October 16, 2020

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Whether speaking/reasoned Yes/No Whether Reportable Yes/No