

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

**Civil Revision No.1810 of 2019**

**Date of Decision: August 03 , 2021.**

Keemti Rai

..... PETITIONER(s)

**Versus**

Dalip Singh (deceased) through LR Kulwant Singh

..... RESPONDENT(s)

**CORAM:- HON'BLE MRS.JUSTICE LISA GILL**

Present: Mr. B.S.Bhalla, Advocate  
for the petitioner.

Mr. Akhil Kashyap, Advocate for  
Mr. Parveen K.Kataria, Advocate  
for the respondent.

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**LISA GILL, J.**

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

Petitioner, who is arrayed as respondent in the ejectment petition filed by respondent-landlord, has filed this revision petition challenging order dated 07.02.2019 passed by the learned Rent Controller, Moga whereby it is observed that opportunity for cross-examining AW2 Kulwant Singh was given, but cross-examination is treated as 'Nil'.

Learned counsel for the petitioner submits that the matter came up before the learned Rent Controller on 05.02.2019 and following order was passed:-

“Previous cost not paid. No evidence of applicant is present. At request adjourned on 07.02.2019 for cross examination of Darshan Singh

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and evidence of applicant to be produced at own responsibility subject to cost of Rs.1000/- to be paid to each witness being last opportunity. Copy of affidavit if any be supplied at least one day advance to counsel for respondent.”

Learned counsel for the petitioner submits that a copy of affidavit dated 07.02.2019 of AW2 Kulwant Singh, tendered in evidence, was not supplied to petitioner’s counsel and it is on 07.02.2019 itself that copy of the affidavit was handed over to him. Reference is made by learned counsel to the fact that the file was taken up five times by the learned Rent Controller on 07.02.2019. Orders passed on all these occasions are reproduced in para 4 of the petition. It is pointed out that cross-examination of AW Darshan Singh was carried out on 07.02.2019 however, petitioner’s counsel (respondent therein) sought a short adjournment for cross-examination of AW2 Kulwant Singh, which was declined. Learned Rent Controller observed that opportunity has been given for cross-examination, which is treated as nil. Landlord’s evidence in affirmative was closed and the matter adjourned for present petitioner’s evidence. The orders passed by the learned Rent Controller are reproduced as hereunder:-

“Present: Sh. Vinay Kashyap, Adv. for petitioner.  
None for respondent.

Previous Cost not paid. Both the witnesses Darshan Singh and Kulwant Singh come present in the court but counsel for respondent did not come present in the court for cross-examination of witness Darshan Singh and examining Kulwant Singh. File be taken up after some time for awaiting presence of respondent.

Date of Order: 07.02.2019

Tushar Kaur Thind  
Civil Judge Junior Division

**At 12.45 PM**

Present: Sh. Vinay Kashyap Adv. for petitioner.  
Sh. Balwinder Singh Adv. for respondent.

Both the witnesses present in the court. Ld. Counsel for petitioner informed to the court that he supplied the copies of affidavits to the opposite counsel two days in advance. But he declined to take the same. Ld. Counsel for respondent present in the court at 12.45 PM. It is already about lunch time. Now file be taken up after lunch session.

Date of Order: 07.02.2019

Tushar Kaur Thind  
Civil Judge Junior Division

**At 2.30 PM**

Present: Sh. Vinay Kashyap Adv. for petitioner.  
None for respondent.

Case called several times. But no one has come present on the behalf of ld. Counsel for respondent in the court. Now file be taken up after some time for awaiting presence of respondent.

Date of Order: 07.02.2019

Tushar Kaur Thind  
Civil Judge Junior Division

**At 3.30 PM**

Present: Sh. Vinay Kashyap Adv. for petitioner.  
Sh. Balwinder Singh Adv. for respondent.

Ld. Counsel for respondent come present in the court and he requested for an adjournment for cross-examination of both the witnesses. Perusal of file shows that Darshan Singh was examined in chief on 15.10.2018 and his cross examination was deferred at request of ld. counsel for respondent repeatedly. So, ld. Counsel for respondent has already availed many opportunities. Thus, request for adjournment is declined.

At this stage, Darshan Singh examined completely. Now Kulwant Singh is yet to be cross examined. Ld. Counsel for respondent requested for cross examining the witness Kulwant Singh on the next date of hearing. But request for adjournment is declined. Considering the fact that copy of the affidavit of witnesses was also handed over to counsel for respondent in two days advance which he denied to take as admitted by him at bar. Perusal of file shows that cost of Rs. 500/- was imposed which till date has not been deposited by respondent in Legal Aid. Also on the last date of hearing cost of Rs. 1000/- was imposed on respondent to be paid to witnesses, for requesting for adjournment for cross-examination of witness, for which the ld. Counsel has again sought adjournment. His Request is allowed subject to payment of cost on the next date of hearing and cross-examination shall be read into evidence only after payment of cost.

At this stage, ld. Counsel for respondent sought some time to prepare for cross-examination of witness Kulwant Singh. However, as already stated above copy of affidavit of witness was given in advance to counsel and the age of witness is about 63 years and finding no justification to further adjourn the cross-examination of witness. The ld. Counsel for respondent is directed to complete examination of this witness today itself.

Ld. Counsel for respondent had left the court at 4.00 PM and since then the case has been called several times. But none has appeared on behalf of respondent. Now file be taken up at 4.30 PM for awaiting presence of respondent.

Date of Order: 07.02.2019

Tushar Kaur Thind  
Civil Judge Junior Division

**At 4.33 PM**

Present: Sh. Vinay Kashyap Adv. for petitioner.  
None for respondent.

Case called several times but none has appeared on behalf of respondent. Opportunity given and treated as nil. Ld. Counsel for petitioner closed petitioners evidence in affirmative. Now case is adjourned to 25.02.2019 for the evidence of the respondent on filing of list of witnesses/PF and DM within three days.

Date of Order: 07.02.2019

Tushar Kaur Thind  
Civil Judge Junior Division"

Present petition was filed thereafter on 13.03.2019.

Learned counsel for the petitioner points out that affidavit of AW2 Kulwant Singh was prepared and attested on 07.02.2019 itself. There was no question of the said affidavit being handed over two days prior thereto as is observed in order dated 05.02.2019. Petitioner, it is submitted, undertakes to complete cross-examination of AW2 Kulwant Singh, in case one opportunity is afforded. Matter is stated to be listed before the learned Rent Controller on 05.08.2021. Petitioner also undertakes to complete his own evidence within two effective opportunities and further undertakes not to delay the proceedings in any manner. Manifest injustice, it is submitted, shall be caused to the petitioner in case impugned order is not set aside.

Learned counsel for the respondent while opposing the petition submits that counsel representing the present petitioner has himself admitted before the learned Rent Controller that he did not accept a copy of the affidavit of AW2 Kulwant Singh as is noted in the impugned order. However, he is unable to deny that affidavit of AW2 Kulwant Singh was drawn up on 07.02.2019 itself and attested on the same day, therefore, it would be impossible for copy of the said affidavit being handed over to petitioner's counsel prior thereto.

It is apparent that grave prejudice would be caused to the petitioner in case he is not permitted to cross-examine the witness, AW2 Kulwant Singh who is the legal heir of the landlord.

Accordingly, order dated 07.02.2019 passed by the learned Rent Controller, Moga is set aside to the extent that cross-examination of AW2 Kulwant Singh is treated as 'Nil' and evidence of landlord closed, with a direction to the learned Rent Controller to afford one effective opportunity to the petitioner to cross-examine, AW2 Kulwant Singh subject to deposit of Rs.25,000/- as cost to be paid to the respondent. As learned counsel for the respondent has stated that witness Kulwant Singh shall be present on 05.08.2021 before the learned Rent Controller, cross-examination be permitted to be carried out on said date itself subject to deposit of cost as above. The petitioner shall also abide by the statement made on his behalf today that he would complete his evidence, if given two effective opportunities and further not delay the trial in any manner.

Petition is accordingly disposed of.

August 03 , 2021.  
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( **LISA GILL** )  
**JUDGE**

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