

CR-1551-2021

Date of decision : August 18, 2021

MUNICIPAL CORPORATION , LUDHIANA AND ORSPetitioners
Versus

PAWAN KUMARRespondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Sanjeev Soni, Advocate for the petitioners.

LISA GILL, J.

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

Prayer in this revision petition is for setting aside order dated 09.10.2019 (Annexure P12) whereby it is observed that opportunity was given to the defendant to conduct his cross examination but he failed to conduct the same, therefore, cross examination of plaintiff PW2 - Pawan Kumar is treated as 'opportunity given nil'. Petitioners also challenge order dated 15.02.2020 whereby its application for recalling the witness for cross examination and recalling of order dated 09.10.2019 was dismissed.

It is submitted that the plaintiff – respondent Pawan Kumar has filed a suit for permanent injunction restraining the present petitioners from dispossessing the plaintiff illegally and forcibly, except in due course of law. Learned counsel for the petitioners submits that the present is a case of illegal encroachment of government land by the plaintiff Pawan Kumar and in case an opportunity of cross examination of the said witness, PW2 Pawan Kumar (plaintiff himself) is denied, manifest injustice shall be caused to the petitioners. Learned counsel refers to various orders passed by the learned trial Court to submit that the petitioners had sought only two adjournments for the purpose of cross examination of this witness

and on rest of the occasions, matter had been adjourned due to absence of the plaintiff's witness or for other reasons but not on account of present petitioners seeking adjournment. It is further submitted that substantial and cogent reason has been mentioned in the application explaining as to why counsel for the petitioners was not present for cross examination of the witness, as is detailed in para 2 of the application seeking recall of order dated 09.10.2019 and recall of witness Pawan Kumar for the purpose of cross examination. Said application for recall of order was filed immediately. Therefore, learned trial Court it is stated has wrongly observed that matter is not being pursued diligently by the petitioners or that there is lackadaisical approach. Moreover, no prejudice shall be caused to the respondent – plaintiff in case this petition is allowed.

Heard learned counsel for the petitioners and have gone through the file with his assistance.

This order is being passed without issuance of notice of motion to the respondent in order to obviate any further delay and unnecessary cost to the respondent.

It is not in dispute that present petitioners have taken a specific plea in the written statement filed on its behalf that the plaintiff is an encroacher upon government land and that property in question is owned by the Municipal Corporation, Ludhiana.

I have perused various orders passed by the learned trial Court, which are appended with this petition. In case, petitioners are not allowed to cross examine plaintiff PW2 Pawan Kumar, manifest injustice shall indeed be caused, therefore, it is considered just and expedient to allow one effective opportunity to the petitioners to cross examine plaintiff PW2 Pawan Kumar, subject to deposit of Rs.5,000/- as costs, to be handed over to the plaintiff – respondent.

Accordingly, orders dated 15.02.2020 and 09.10.2019 are set aside to the extent that cross examination of PW2 Pawan Kumar has been treated to be 'nil' after opportunity being given. Learned trial Court to afford one effective opportunity to the petitioners to cross examine plaintiff PW2 Pawan Kumar subject to deposit of cost of Rs.5,000/-, to be handed over to the plaintiff – respondent.

Present petition is, accordingly, disposed of.

Liberty is afforded to the respondent – plaintiff to move an appropriate application, in case, there is any discrepancy in the facts, which have been set forth before this Court.

August 18, 2021
rts

(Lisa Gill)
Judge

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