

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

Sr. No.131

CR-40-2022 (O&M)

Date of Decision: 17.02.2022

PARDEEP SINGH @ PARDEEP KUMAR

...Petitioner

VERSUS

MANBIR AND OTHERS

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr. Pardeep Chokker, Advocate,
for the petitioner.

ARCHANA PURI, J.

Taken up in virtual mode.

CM-602-CII-2022

The instant application has been filed for placing on record zimini order dated 02.12.2021.

In view of the averments made in the application, same is allowed and zimini order dated 02.12.2021 is taken on record.

Main Case

Present revision petition has been filed for setting aside the impugned order dated 02.12.2021 (Annexure P-4) passed by the Additional Civil Judge, vide which the case has been fixed for DWs without giving any opportunity to the petitioner to cross examine the PWs.

It is now submitted by learned counsel for the petitioner, who was defendant No. 6, before the Lower Court that no proper opportunity had been given to him to conduct cross examination of the witnesses of the plaintiff, who were PW-1 and PW-2. It is submitted that during the pendency of the case, learned counsel for the petitioner (defendant No.6) had died and on this account, an adjournment was sought. Vide order dated 26.07.2021, the same was allowed. Furthermore, the case was adjourned for 16.09.2021, subject to payment of cost, but however, due to inability to collect the documents, the cross-examination was not conducted and vide order dated 02.12.2021, cross-examination was stated to be completed.

Perusal of the order dated 02.12.2021 passed by the Lower Court reveals that the cross-examination of PW-1 and PW-2 had been conducted, but learned counsel submits that he had made a prayer for adjournment. Statement of PW-2, Manbir Singh, as well as PW-2, Sheela Devi, have been placed on record, which reveals about the presence being marked of one counsel on behalf of the defendants, whereas, there were different counsel, as evident from the other zimini orders. The presence of the counsel for defendant No.6 has not been specifically marked, even though, he had filed Power of Attorney, as evident from the order dated 01.10.2021.

Learned counsel for the petitioner also submits that only one opportunity be granted to conduct the cross-examination of PW-1 and PW-2. Even, learned counsel submits that till date, the evidence of defendant has not began.

Considering the aforesaid omissions, creeping in the zimini order, the petition is hereby allowed and the order dated 02.12.2021 is hereby set aside, subject to deposit of Rs.10,000/-, as costs, in the concerned DLSA account, within a period of 3 weeks from today onwards. On doing so, the Lower Court shall provide one opportunity to the petitioner to conduct cross-examination of PW-1 and PW-2, while keeping in view the convenience of one and all.

(ARCHANA PURI)
JUDGE

17.02.2022

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Whether speaking/reasoned
Whether reportable

Yes
Yes/No