

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

(272)

CR-6300-2018 (O&M)
Date of Decision :11.05.2022

Lakhwinder Singh

.....Petitioner

Versus

Ramandeep Singh and Others

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Jatinder Pal Singh Smagh, Advocate for the petitioner.

Ms. Armaan Saggar, Advocate for respondent Nos.1 and 2.

ALKA SARIN, J. (Oral)

This is a revision petition under Article 227 of the Constitution of India read with Section 151 CPC for setting aside the impugned order dated 08.08.2018 passed by the Civil Judge (Junior Division), Ferozepur vide which opportunity to cross-examine PW-1 and PW-2 has been treated as nil.

The brief facts relevant to the present lis are that on various dates PW-1 and PW-2, namely, Jaskaran Singh and Nirmal Singh, though present were not cross-examined by the counsel for the defendants and the matter was repeatedly adjourned on the request of the counsel.

On 26.07.2018 it was noted by the Trial Court in it's order that both the PWs were present but could not be examined as the counsel for the defendants sought an adjournment. On his request, the witnesses were bound down for 08.08.2018.

On 08.08.2018 the following order was passed :

“Today the case was fixed for cross-examination of two PWs. Perusal of judicial file reveals that the counsel for defendant no.3 had filed an application for recalling order dated 7.3.18 vide order dated 21.5.2018 passed by the learned predecessor of this court. The application moved by defendant no.3 to allow him to cross examine PW1 and PW2 was allowed with costs of Rs.1000 subject to condition that only one effect opportunity is afforded to the defendant no.3 for said purpose. Thereafter opportunity is afforded to the defendant no.3 for said purpose. Thereafter case was fixed for 9.7.2018 for cross-examination of PW1 and PW2. On the said date i.e. 9.7.18 the undersigned was on leave and case was adjourned to 21.7.18 for cross-examination of PW1 and PW2. On 21.7.18 neither PW1 nor PW2 come present for cross-examination. Thereafter case was fixed for 26.7.18. On the said date i.e. 26.7.2018 the said witness is duly come present but they were not examined at the request of counsel for defendant. Keeping in view the order dated 21.5.18 passed by the learned predecessor of this court only one opportunity was granted for cross-examination of PW1 and PW2. As such no further opportunity is to be given for cross-

examination of PW1 and PW2.

Accordingly now case stands adjourned to 30.8.2018 for remaining plaintiff evidence subject to last opportunity.”

Learned counsel for the defendant No.3-petitioner would contend that the request for an adjournment was acceded to by the Court on 26.07.2018 and the witnesses were bound down for 08.08.2018. However, on 08.08.2018, the Court passed an order that keeping in view the order dated 21.05.2018 wherein only one opportunity was granted for cross-examination of PW-1 and PW-2, as such no further opportunity for cross-examination of PW-1 and PW-2 could be given. Learned counsel would further contend that great prejudice would be caused to the defendant No.3-petitioner in case he is not permitted to cross-examine the two witnesses.

Per contra, learned counsel for the plaintiff-respondent Nos.1 and 2 has contended that numerous opportunities were given for cross-examination of PW-1 and PW-2. Vide order dated 21.05.2018 one final opportunity was granted for cross-examination of PW-1 and PW-2 and since they were not cross-examined, hence, the question of granting any further opportunity did not arise.

Heard.

A perusal of the impugned order as well as the zimni orders appended with the petition clearly reveals that after 21.05.2018 some opportunities were given to the counsel for the defendants for cross-examination of PW-1 and PW-2. A similar opportunity was yet again granted vide order dated 26.07.2018 and the witnesses were bound down

for 08.08.2018. On 08.08.2018 there was no reason for the Court not to permit the counsel for the defendants to cross-examine the witnesses after having passed the order on 26.07.2018 binding down the witnesses for 08.08.2018. Hence, the order dated 08.08.2018 cannot be held to be sustainable in law.

In view of the above, the present revision petition is allowed. The defendant No.3-petitioner is granted one opportunity to cross-examine the witnesses PW-1 and PW-2 subject to payment of Rs.30,000/- as costs. Parties are directed to appear before the Trial Court on 30.05.2022 at 10.00 a.m.

It is made clear that in case the defendant No.3-petitioner fails to cross-examine the witnesses PW-1 and PW-2 on the date fixed by the Trial Court for cross-examination of the said witnesses, the Trial Court would be at liberty to treat it as opportunity given but cross-examination as nil and proceed in accordance with law. No further opportunity shall be afforded to the defendant No.3-petitioner at any cost. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

May 11, 2022

sandeep

Whether speaking/reasoned:-
Whether Reportable:-

Yes/No
Yes/No