

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

**CR-8002-2015 (O&M)
Date of decision : 27.07.2022**

Gursharan Singh

... Petitioner(s)

Versus

Veer Kaur (Deceased through LR's) And Ors.

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sourabh Goel, Advocate and
Ms. Samridhi Jain, Advocate for the petitioner.

Mr. Aman Dhir, Advocate, Legal Aid Counsel
for respondent No.1(i).

ALKA SARIN, J. (ORAL)

The present petition under Article 227 of the Constitution of India has been filed impugning the order dated 12.10.2015 (Annexure P-3) and the order dated 03.11.2015 (Annexure P-6) dismissing the application for recalling of the order dated 12.10.2015.

Learned counsel for the defendant No.2-petitioner would contend that the Court has wrongly noted that the costs were not paid and further that PW1-Kanwaljit Singh stands partly cross-examined and hence further cross-examination of the PW1 by the defendant No.2-petitioner has wrongly been disallowed.

Per contra, Mr. Aman Dhir, Legal Aid Counsel appearing on behalf of the respondent No.1(i) has contended that the conduct of the

defendant No.2-petitioner needs to be taken into account in the present case. The civil suit was filed in the year 2004 by Veer Kaur, mother of the defendant No.2-petitioner, for separate possession by way of partition by metes and bounds of the properties described in the head-note of the plaint. The petitioner herein was arrayed as defendant No.2 in the said suit. The plaintiff in the said suit, Veer Kaur, died during the pendency of the suit (date of death is not forthcoming). After the death of Veer Kaur (plaintiff), defendant No.2-petitioner filed an application for being transposed as a plaintiff being one of the legal representative of Veer Kaur in the suit. The application was allowed. Thereafter, after being transposed as a plaintiff, the petitioner herein filed an application for withdrawal of the suit with liberty to file afresh which application was dismissed on 09.07.2015. Yet again, another application was filed by the petitioner herein for being re-transposed from the plaintiff to defendant No.2 which application was allowed on 05.08.2015. Thereafter, the defendant No.2-petitioner filed his written statement on 13.08.2015. The matter was subsequently adjourned on numerous dates for filing of written statement of defendant No.7 and on 28.09.2015 costs of Rs.700/- were imposed on the defendant No.2-petitioner for not conducting the cross-examination of PW1. On 12.10.2015 the defendant No.2-petitioner partially cross-examined PW1 and in the post lunch session moved an application for issuance of directions to the other defendants to conduct the cross-examination of PW-1 as they had allegedly colluded with each other. The said application was dismissed on 12.10.2015 and the cross-examination of PW1, Kanwaljit Singh, has been treated as nil on behalf of defendant Nos.1(i), (a) to (d) and defendant No.2-petitioner.

The contention of Mr. Aman Dhir, Advocate, Legal Aid Counsel appearing on behalf of respondent No.1(i) is that the conduct of the defendant No.2-petitioner needs to be seen in the present case as he has been delaying the matter on one pretext or the other.

Heard.

A perusal of the order dated 12.10.2015 reveals that the matter was listed in the 10 years' old category cases. The defendant No.2-petitioner had earlier put in appearance as defendant No.2 and after the death of his mother, Veer Kaur (plaintiff), had sought transposition as a plaintiff which was allowed. Subsequently, an application was filed by the defendant No.2-petitioner for withdrawal of the suit with liberty to file afresh which application was dismissed on 09.07.2015. Having failed in his endeavour to withdraw the suit, he yet again moved an application for being re-transposed as defendant No.2 which was allowed on 05.08.2015. The written statement was filed by defendant No.2-petitioner on 13.08.2015. The matter was subsequently adjourned on various dates for filing of the written statement of defendant No.7. On 28.09.2015 costs were also imposed on the defendant No.2-petitioner for not cross-examining PW1. The learned counsel for the petitioner has contended that the costs were deposited as per the receipt attached though the same was not recorded in the order. On 12.10.2015 the cross-examination of PW1 was partially conducted in the pre-lunch session and in the post-lunch session, strangely, an application was moved by the defendant No.2-petitioner that remaining defendants be directed to cross-examine PW1, Kanwaljit Singh, since they were colluding. A perusal of the application (Annexure P-2) reveals that there are no reasons forthcoming as

to why this application could not be moved at an earlier point of time. It is only after having conducted the cross-examination of PW1 partially that it appears to have dawned upon the defendant No.2-petitioner that the defendants were colluding and hence they should cross-examine PW1 first. The said application was dismissed vide a separate order dated 12.10.2015 and the Court opined that there was no justification for granting any more opportunity to defendant Nos.1(i), (a) to (d) and defendant No.2-petitioner for cross-examination of the witnesses. Hence, vide the impugned order dated 12.10.2015 the cross-examination of PW1, Kanwaljit Singh, was treated as nil on behalf of defendant Nos.1(i), (a) to (d) and defendant No.2-petitioner. Thereafter, an application for recall of the order dated 12.10.2015 was filed on the ground that the counsel had never refused to conduct further cross-examination of PW1. Vide order dated 03.11.2015 the Court yet again noticed that the matter was being unnecessarily delayed by the defendant No.2-petitioner and defendant No.1(i) and (a) to (d) despite the fact that the case was listed in the 10 years' old category cases and as per the directions of this Court the same was required to be disposed off expeditiously. It was further noticed that despite lapsing of 10 years' period, the cross-examination of PW1, Kanwaljit Singh, was pending. The application for recall was accordingly dismissed.

Though the endeavour on the part of the defendant No.2-petitioner seems to be to delay the matter on one pretext or the other, however, in order to do complete justice between the parties, this Court deems it appropriate to grant one opportunity to the defendant No.2-petitioner to conclude the cross-examination of PW1, Kanwaljit Singh, on

the next date of hearing i.e. 29.07.2022, subject to the payment of Rs.30,000/- as costs to be paid to the plaintiff-respondent No.1(i), Kanwaljit Singh.

It is made clear that in case the costs are not paid and the cross-examination of PW1, Kanwaljit Singh, is not conducted on the next date of hearing i.e. 29.07.2022, the present petition shall be deemed to have been dismissed.

The Trial Court is requested not to give any unnecessary adjournments and to conclude the trial expeditiously.

Disposed off accordingly. Pending applications, if any, also stand disposed off.

27.07.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO