

312

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

-.-

CR-1524-2020 (O&M)

Date of Decision : 06.07.2022

Ram Dass

...Petitioner

versus

Mahadev Gir Chela Baba Itwar
Gir Chela Baba Samudra Gir

...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Parminder Singh, Advocate for the petitioner.

Mr. Sumit Gupta and Mr. Ashish Gupta, Advocates
for the respondent.

ALKA SARIN, J. (Oral)

The present revision petition under Article 227 of the Constitution of India has been filed challenging the order dated 13.12.2019 (Annexure P-2) and the order dated 19.02.2020 (Annexure P-5) whereby the petitioner-defendant was proceeded against ex-parte and thereafter the application challenging the said ex-parte order was also dismissed.

Learned counsel for the petitioner-defendant would contend that PW-9 Sunil Verma whose cross-examination was deferred was an expert witness on the day when he was examined in chief and since certain inputs were required and his cross-examination was deferred. Thereafter, the matter was adjourned to 27.11.2019. On the said date also the said witness could not be examined. On 13.12.2019 i.e. the day when the petitioner-defendant was proceeded against ex-parte, the petitioner-defendant could not appear as his wife had undergone an operation at Panipat. It is further the contention

of the learned counsel for the petitioner-defendant that he may be given one effective opportunity to cross-examine the said witness as PW-9 is an expert witness/material witness and in case the said witness is not cross-examined great prejudice would be caused to the petitioner-defendant.

Per contra, learned counsel for the respondent-plaintiff has stated that despite numerous opportunities, the expert witness was not cross-examined and hence the order has rightly been passed proceeding against the petitioner-defendant ex-parte.

Heard.

In the present case, the suit was fixed for cross-examination of PW-9 Sunil Verma. However, the said witness could not be cross-examined as the wife of the petitioner-defendant is stated to have suffered a fracture and had undergone a surgery. On the same date, the petitioner-defendant was proceeded against ex-parte and the evidence of the plaintiff-respondent was also closed. Thereafter, an application for setting aside the ex-parte order dated 13.12.2019 was also dismissed vide order dated 19.02.2020. Hence the present revision petition.

The witness PW-9 is a material witness being a hand-writing expert who has been produced to show the fact that the Will, which is under challenge, is a forged and fabricated document and hence it would be necessary and expedient for the petitioner-defendant to cross-examine the said witness. A perusal of the *zimni* orders shows that the petitioner-defendant had regularly been appearing and 13.12.2019 was probably the

first date when the petitioner-defendant was not represented by the counsel and was proceeded against ex-parte.

In view of the above, I deem it appropriate to set aside the impugned order dated 13.12.2019 whereby the petitioner-defendant was proceeded against ex-parte and further the petitioner-defendant is granted one effective opportunity to cross-examine the witness PW-9 on the next date of hearing subject to the payment of Rs.20,000/- as costs to be paid to the plaintiff-respondent.

The revision petition is accordingly disposed off. Pending applications, if any, also stand disposed off.

July 06, 2022
tripti

(ALKA SARIN)
JUDGE

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