

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

208

CR-4187-2019 (O&M)
Date of decision: 05.09.2022

Hans Raj

...Petitioner

Versus

Jagdish Chand

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. G. C. Shahpuri, Advocate
for the petitioner.

Mr. Rakesh Bakshi, Advocate &
Mr. Abhimanyu Singh, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for setting aside the impugned order dated 16.05.2019, passed by the trial Court, vide which the application filed by the petitioner/defendant, under Order 18 Rule 17 CPC read with Section 151 CPC for recalling the witnesses, has been dismissed.

This petition is pending since 2019 and on 16.07.2019, the following order was passed by this Court:

“There is some typographical omission in the order dated 10.07.2019. In fact, petitioner was proceeded against ex parte in the year 2013, but somehow, it was recorded in the order that the suit was dismissed for non-prosecution in the year 2013. Learned counsel for the petitioner contends that vide order dated 05.10.2018 passed by the Additional District Judge, Yamunanagar at Jagadhari, the application under Order 9 Rule 13 CPC filed by the petitioner was allowed at appellate stage and the petitioner was allowed to join the proceedings from

the stage when he was proceeded against ex parte. Petitioner was proceeded against ex parte vide order dated 08.08.2013 when the case was fixed for evidence of the defendant/petitioner. Prior to the aforesaid order, only one effective date was given to the petitioner on 09.05.2013 and thereafter, the case was adjourned to 08.08.2013 for entire evidence of the defendant at his own responsibility. The evidence of the plaintiff was closed on 01.04.2013. 09.05.2013 was the only effective date when the evidence of the defendant was not present.

Notice of motion for 30.10.2019.

Till the next date of hearing, trial Court shall adjourn the proceedings beyond the date fixed by this Court.”

Since then, this petition is pending and the aforesaid interim order is continuing.

Learned counsel for the petitioner submits that once the *ex-parte* order was set aside by the lower appellate Court and the case was remanded back to the trial Court, vide order dated 05.10.2018, the trial Court should have allowed the application granting one effective opportunity to the petitioner to cross-examine in order to pass an effective order for deciding the main suit.

Learned counsel for the petitioner relies upon a judgment of this Court rendered in **2018 (2) Law Herald 1243 Jasdip Singh vs. Harkanwal Singh**, wherein in similar circumstances, it has been held that the parties cannot be prevented from cross-examination of witnesses which would have a serious effect on the decision. Reliance is also placed upon another judgment of this Court rendered in **2016 (3) PLR 68 Urmil vs. Rajiv Kumar Gupta**, wherein similar view has been taken by this Court.

Learned counsel for the respondent argues that the petitioner/defendant is unnecessarily delaying the proceedings as one point of time, an ex-parte order was passed by the trial Court on 08.08.2013 and on account of the conduct of the petitioner/defendant, the case is being delayed.

After hearing learned counsel for the parties and going through the facts of the case, I find merit in this case.

Admittedly, two of the witnessess i.e. PW-3 Jagdish Chand and PW-4 Sudesh Kumar Numberdar were cross-examined in detail by the petitioner, however, at the time when the case was adjourned for recording the cross-examination of PW-1 and PW-2, the petitioner was proceeded ex-parte.

This is admitted fact that the ex-parte proceedings were set aside by the lower appellate Court in an appeal filed by the petitioner and the case was remanded back to the trial Court, therefore, for all intent and purposes, once the ex-parte proceedings were set aside, the case would relate back to the stage, when it was fixed for recording the statement of the plaintiff, which was wrongly treated as 'nil'.

Even otherwise, if the petitioner/defendant is not permitted to cross-examine the aforesaid two witnesses, i.e PW-1 and PW-2, he will not be able to put his defence, which is necessary to be brought on record for the trial Court to reach a just and fair decision of the case.

Accordingly, the present petition is allowed and the impugned order is set aside.

The trial Court is directed to afford two effective opportunities

to the petitioner to cross-examine the aforesaid two witnesses. The effective opportunity would mean when the Presiding Officer is holding Court and the witnesses are present in Court.

However, this will be subject to a condition that the petitioner will pay an amount Rs. 5,000/- in cash as costs to the plaintiff/respondent.

05.09.2022

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No