

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

CR-4519-2022
Decided on:-17.10.2022

Gurdip Singh

....Petitioner

vs.

Baljit Singh and others

....Respondents.

CORAM:HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. B.D. Sharma, Advocate,
 for the petitioner.

HARKESH MANUJA J. (Oral)

The present petition has been directed against the order dated 13.07.2022 (Annexure P-11) passed by Civil Judge (Junior Division), Jalandhar, whereby, the petitioner has been denied an opportunity to cross-examine the defendants' witness i.e. DW-1, namely, Arwinder Singh Makkar.

The facts leading to the present revision petition are that the petitioner-plaintiff filed a suit for declaration, claiming himself to be owner in possession of the suit land measuring 10 kanals 8 marlas situated within the revenue estate of village Nandanpur, Tehsil and District Jalandhar-II, further seeking declaration to the effect that respondent No.1 was no more his general attorney regarding the aforesaid land and also prayed for permanent injunction restraining him from alienating the suit property. The evidence of the petitioner-plaintiff was concluded on 07.08.2019 and thereafter, the matter was ordered to be listed for recording of the evidence of respondent No.2/defendant No.2.

In pursuance thereof, affidavit of Arwinder Singh Makkar (DW-1) was submitted in affirmative evidence before the trial court on 01.11.2019. Thereafter, the witness i.e. DW-1 Arwinder Singh Makkar appeared for his cross-examination on two dates i.e. on 20.12.2019 and 09.01.2020 but somehow could not be cross-examined by the learned counsel representing the petitioner before the learned trial court, for the reasons beyond his control, which can be easily made out from the perusal of orders dated 20.12.2019 and 09.01.2020 and the same are reproduced here under for reference:-

“On 20.12.2019, the following order was passed:-

“Today, in the pre lunch session, DW Arwinder Singh Makkar has come present but was not cross examined by Ld. Counsel for the plaintiff as he was busy in some another court, however, in the after lunch session, DW Arwinder Singh Makkar is not present where counsel for the plaintiff has present. In view of the aforesaid circumstances, it is hereby ordered that DW Arwinder Singh Makkar is directed to be present on 09.01.2020 at 11 am and the counsel for the plaintiff is also directed to be present at the same time on the said date. On failure of the witness to come present on the said date, evidence of the defendant will be closed by an order and on failure of counsel for the plaintiff to come present on that date, opportunity to cross examine DW Arwinder Singh Makkar will be treated as nil.”

On 09.01.2020, the following order was passed:-

“DW Arwinder Singh is present in the cross examined by Ld. Counsel for the plaintiff. Proxy counsel for the court, however, not plaintiff is present in the court who has submitted that counsel for the plaintiff Sh. Manmohan Singh Sodhi has underwent a surgery, therefore, could not come present today in the court, as such, he has requested for adjournment. The plaintiff is supported with copy of the medical certificate(original seen and returned). Request heard and allowed. Now to come upon 27.01.2020 for DWs.”

Thereafter, on subsequent dates, the matter could not be taken up either on account of covid-19 situation or on account of non-appearance

of Arwinder Singh (DW-1) for his cross-examination.

It was only on 10.05.2022, when the witness, Arwinder Singh Makkar (DW-1) came present before the learned trial court for his cross-examination, however, on a joint request made by both the parties for the purposes of exploring the compromise, the matter was adjourned to 30.05.2022, subject to payment of cost of Rs.3000/- by each of the parties to the DLSA. On the date fixed i.e. 30.05.2022, the cost was paid and matter was again adjourned to 13.07.2022 for recording of the defendant evidence. On the said date i.e. 13.07.2022, as the petitioner did not cross-examine Arwinder Singh Makkar (DW-1), his opportunity to cross-examine the said witness was recorded as NIL and the matter was ordered to be adjourned for recording of the remaining defendant evidence on 03.08.2022.

In the present revision petition, learned counsel for the petitioner contends that though there has been some kind of casual approach adopted by learned counsel representing the petitioner before the trial court for having failed to cross-examine DW-1 Arwinder Singh Makkar, however, while referring to the zimni orders attached along with the present revision petition, he points out that the said approach was primarily for the reason that genuine and sincere talks were going on between the parties to compromise the matter. He further submits that in case, the opportunity to cross-examine DW-1 Arwinder Singh Makkar was denied to the petitioner, substantial rights of his client would be seriously prejudiced, as he will not be able to put forth his case to the witness of the defendant thereby losing chance to rebut the defence set up by the defendant in the written statement as well as in the affidavit of evidence.

I have heard learned counsel for the petitioner and gone

through the paper book, I find substance in his submissions.

Perusal of zimni orders attached with the paper book clearly show that affidavit in affirmative was submitted by DW-1 Arwinder Singh way-back on 01.11.2019 and thereafter, he did not appear for cross-examination except on two occasions i.e. 20.12.2019 and 09.01.2020 and on both the aforesaid occasions, the cross-examination could not be conducted for bonafide reasons beyond the control of the petitioner. Thereafter, DW-1 appeared on 10.05.2022, when the matter was got adjourned on the joint request made by both the parties for the purpose of exploring the possibility of settlement. As the settlement could not be entered into between the parties, the payment of cost of Rs.3000/- each was tendered before the learned trial court by both the parties and the matter was adjourned to 13.07.2022 for the cross-examination of DW-1.

I am convinced with the submissions made by learned counsel for the petitioner that on most of the occasions the cross-examination could not be effected on account of non-appearance of DW-1 and on the last 2-3 hearing, the talks for compromise were going on between the parties, which led to the non-examination of DW-1 Arwinder Singh Makkar.

In the facts and circumstances of the present case, in case, the petitioner-plaintiff is not permitted to cross-examine DW-1 Arwinder Singh Makkar, by adopting a hypertechnical approach, a serious prejudice will be caused to his rights, as he will not be able to controvert or rebut the stand of the defendants.

Keeping in view the principles of interest of justice as well as the fact that the procedural aspects are not to curtail the substantial right of the parties, I hereby allow the present revision by setting aside the

impugned order dated 13.07.2022.

However, in order to balance the equities, there shall be a cost of Rs.5000/- imposed upon the petitioner, to be paid to respondent No.2.

The present revision petition is being disposed of at preliminary stage without issuing notice to the respondents, in order to avoid any delay in the proceedings before the trial court. However, in case, the respondents find any misrepresentation of facts at the instance of the petitioner, they shall be at liberty to move an appropriate application in this regard.

Pending application(s), if any, shall also stand disposed of.

(HARKESH MANUJA)
JUDGE

17.10.2022
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/ No