

S.No.107

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

\*\*\*\*

**Civil Revision No.5058 of 2022**

**Date of Decision:11.11.2022**

**Gobind Malhotra**

**.....Petitioner**

**Vs.**

**Kamal Malhotra and another.....Respondents**

**CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA**

Present:- Mr. Johan Kumar, Advocate for the petitioner.

\*\*\*\*

**DEEPAK GUPTA, J.**

This revision is against order dated 26.09.2022 (Annexure P4), whereby the learned trial Court debarred the petitioner - defendant N: 2 from cross-examining the witness of the respondent- plaintiff. Following is the impugned order:-

“Today the case is fixed for plaintiff evidence. PW Kamal Malhotra is present but not cross examined. Adjournment was sought by counsel for defendant no.2 on the ground that he has not been supplied with the copy of affidavit as well as documents. Perusal of order dated 17.1.2020 reveals that copy of affidavit as well as documents have been supplied to counsel for defendant. Thereafter, many opportunities have been obtained by counsel for defendant no.2 and today also adjournment is sought on the ground that copy has not been supplied. This court informed him that adjournment will be allowed, subject to cost of Rs.2000/-. At this stage, learned counsel for defendant no.2 stated at bar that he be proceeded exparte instead and his presence be not taken on record. Keeping in view the statement made at bar, the right to cross examine the witness is

closed by court orders as it appears that such a statement is made only to prolong the matter. Now to come upon 22.11.2022 for remaining evidence of plaintiff.”

The contention of the petitioner is that after 01.04.2020, due to Covid-19 situation in the country, proceedings in the suit did not take place and when the matter came up for hearing on 20.08.2021, no PW was present. When the case was ultimately taken up for effective hearing on 26.09.2022, request was made for adjournment to cross-examine PW Kamal Malhotra but the right of petitioner to cross-examine the witness was struck off.

Contrary to the submissions made by counsel for the petitioner, the impugned order reveals that many opportunities had already been availed by counsel for the petitioner – defendant N: 2 to cross-examine the witness. As it was pleaded that copy of affidavit was not with counsel for the petitioner, court wanted to adjourn the matter subject to costs of ₹ 2,000/- but Ld. counsel stated at bar that his presence be not taken on record and that defendants No.2 (petitioner herein) could be proceeded ex-parte.

Considering the aforesaid circumstances, the petitioner cannot be allowed to plead that his right to cross-examine has been wrongly struck off. However, the conduct of the counsel should not prejudice the right of a party.

This revision is hereby allowed subject to costs of ₹20,000/- payable by the petitioner- defendant No.2 to the respondent- plaintiff by way of a demand draft in favour of the plaintiffs. It is further directed that only one effective opportunity shall be provided to the petitioner- defendant

No.2 to cross-examine the witness of the plaintiff. It will be for the

petitioner to ensure the presence of his counsel on the date to be fixed by the trial Court.

November 11, 2022  
renu

( DEEPAK GUPTA )  
JUDGE

|                           |        |
|---------------------------|--------|
| Whether Speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |