

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

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**CR No.5695 of 2022 (O&M)
Date of Decision: 05.12.2022**

Mukesh Kumar

.....Revisionist-Petitioner

Versus

Yogesh Kumar and others

.....Respondents

BEFORE: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. H.S. Saggu, Advocate
for the revisionist-petitioner.

MEENAKSHI I. MEHTA, J.(Oral)

By way of the instant revision petition, the petitioner-defendant No.2 (for short 'defendant No.2') has laid challenge to the order dated 20.10.2022 (Annexure P-3) passed by learned Civil Judge (Junior Division), Jalandhar (for short, 'the trial Court') in Civil Suit No.50539 of 2013 titled as ***Yogesh Kumar Vs. Suresh Kumar etc***, whereby the evidence of the defendants has been closed, including his own cross-examination as DW-2, while observing that though, he was present in the Court on that day but he refused to step into the witness-box, in the absence of his counsel.

2. I have heard learned counsel for the petitioner-defendant No.2, at the preliminary stage, in this revision petition and have also perused the file carefully.

3. It is worth-while to mention here that at the very outset, learned counsel for defendant No.2 has restricted his prayer to the extent of

allowing the completion of the testimony/cross-examination of his client as DW-2. Though, as reflected in the impugned order Annexure P-3, defendant No.2 (DW-2) had refused to make depositions in the absence of his counsel but however, this Court cannot lose sight of the fact that he was very much present in the Court for his further cross-examination and it was his counsel who was not available there at that time. It being so, this Court is of the considered opinion that it would be in the fitness of the things and the ends of justice will also be best served if he (defendant No.2-DW2) is afforded one more opportunity for the afore-said purpose but subject to the payment of cost.

4. Resultantly, without issuing notice to the respondents so as to avoid any further delay in the matter and also to avert the expenses that they (respondents) may have to incur to defend in the present petition, the impugned order Annexure P-3 is hereby set-aside to the extent as discussed in the preceding paragraph and the revision petition in hand stands disposed of accordingly, with a direction to the trial Court to afford only one effective opportunity to defendant No.2 for the completion of his cross-examination as DW-2 but the payment of the cost of Rs.15,000/- shall be a condition precedent for this purpose and in the eventuality of the default on his part in completion of his cross-examination or in the payment of the cost, he shall not be entitled to any further opportunity for the above-said purpose.

5. However, it is further clarified that in case the respondents feel aggrieved by this order, they shall be at liberty to move an appropriate

application to contest the instant petition.

December 05, 2022
pooja

(MEENAKSHI I. MEHTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>