

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

110

CR No.187 of 2023

Date of decision: 14.03.2023

Baljinder Kaur and another

....Petitioners

V/s

Darshan Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Amit Kumar Walia, Advocate for the petitioners.

VIKAS SURI, J. (Oral)

This is a revision petition preferred under Article 227 of the Constitution of India aggrieved against the order dated 19.12.2022, whereby the evidence of the plaintiffs was closed by order.

A perusal of the paper-book shows that the petitioners had filed a suit for recovery of Rs.4,00,000/- as damages along with interest @ 18% per annum against respondent-Darshan Singh in the year 2018.

On notice, written statement was filed and the issues were framed vide order dated 28.01.2019. Thereafter, the case was adjourned for plaintiffs' evidence. Two witnesses, i.e. PW-1 and PW-2 were examined and cross-examined on 26.08.2019 and on the request of learned counsel for the plaintiff-petitioners, further proceedings were adjourned. Thereafter, on 21.11.2019, examination-in-chief of PW-3 was recorded and the case was adjourned to 07.01.2020 for cross-examination, on which date the said witness did not come present in Court and accordingly, he was summoned

for 12.02.2020. However, on the said date PW-3 could not be cross-examined and was bound down for 08.04.2020. On the adjourned date, i.e. 08.04.2020, the country was reeling under unprecedented situation due to Covid-19 pandemic and the matter was adjourned from time to time as such.

A perusal of the interlocutory orders would show that after the functioning of the Courts was staggering back to the normalcy, the case was taken up 13.09.2021 and was adjourned to 04.01.2022 for cross-examination of PW-3 and remaining evidence of plaintiffs. It was also ordered that the same be considered as last opportunity. Thereafter, many similar adjournments occasioned and PW-3 was finally cross-examined on 14.10.2022 besides recording examination-in-chief of PW-4. The matter was then adjourned to 06.12.2022 for cross-examination of PW-4 and remaining evidence of the plaintiffs, which was to be considered as the last opportunity. On 06.12.2022, PW-4 was cross-examined and no other plaintiffs' witness was present. The case was adjourned to 19.12.2022, on which date, the impugned order was passed and the plaintiff's evidence was closed by order.

It is submitted by learned counsel for the petitioners that the petitioners have been pursuing their case throughout but their counsel, Sh. Davinder Sharda, Advocate, during the said period, was not keeping well and unfortunately expired on 26.10.2022.

Thereafter, the petitioners were in the process of engaging another counsel and despite the aforesaid, PW-4 was cross-examined on 06.12.2022 in the presence of proxy counsel on behalf of the plaintiff-petitioners.

The petitioners inquired about the next date and it was informed

to them as 23.12.2022 by some clerk and thus their absence on 19.12.2022 was unintentional. It is submitted that the petitioners are not very well conversant with the legal affairs and were handicapped on account of the demise of their counsel and due to a wrong date being informed, resulting in communication gap, the remaining evidence could not be produced on 19.12.2022. However, the petitioners seek only one effective opportunity to conclude their entire evidence.

It has also been submitted that after passing of the impugned order dated 19.12.2022, the matter was adjourned to 06.01.2023 and thereafter to 03.03.2023, on which the date the examination-in-chief of DW-1 was recorded and his cross-examination was deferred. The trial is pending at the stage of cross-examination of DW-1.

Heard learned counsel for the parties and perused the paper-book and the documents placed on record.

Keeping in view the totality of facts and the circumstances of the present case, I am of the considered view that closing the evidence by order the said order would be very harsh, especially keeping in view the fact that the counsel representing the petitioners had recently passed away and while they were in the process of engaging the new counsel, the impugned order was passed. For the inconvenience caused to the defendant-respondent, he can be compensated with costs. It is in the interest of justice that proper evidence is brought on record, which would facilitate the Court to arrive at a fair decision and to do complete justice with the parties.

In view of the above, the present petition is allowed, subject to payment of Rs.10,000/- as costs to be paid to the defendant-respondent. The impugned order dated 19.12.2022 is accordingly modified to that extent and

the plaintiff-petitioners are granted one effective opportunity to complete their entire evidence. They would be at liberty to seek assistance of the Court to summon the record/witnesses for the said purpose.

Needless to observe that after recording plaintiff's evidence, the defendant-respondent would also be granted an effective opportunity to re-examine his witness DW-1, whose examination-in-chief is shown to have been recorded, after passing of the order dated 19.12.2022.

This revision petition is disposed of in the aforesaid terms.

(VIKAS SURI)
JUDGE

March 14, 2023
vcgarg

Whether speaking/reasoned:	Yes
Whether reportable:	No