

2023:PHHC:053063

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

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**CR No.1430 of 2023
Date of Decision: 03.03.2023**

Madhu Saini and another

.....Petitioners

vs.

Raj Rani and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Dhruv Gupta, Advocate for the petitioners.

VIKAS SURI, J.

This is a civil revision petition preferred under Article 227 of the Constitution of India aggrieved against the order dated 12.01.2023 (Annexure P-1) passed by the Rent Controller, Ambala whereby the opportunity for cross-examination of PW1-Rajni Bala (landlord) was ordered to be considered as 'Nil'.

A perusal of the paper book shows that the respondents filed a petition seeking ejectment of the petitioners from the demised premises. In the ejectment petition, an application under Section 6-A of the Haryana Urban (Control of Rent and Eviction) Act, 1973 was also filed claiming therein that the tenant was in arrears since 01.03.2018. During the restricted functioning of the Courts between the period from 01.04.2020 up to 10.05.2021, the matter kept being adjourned in view of numerous instructions/directions issued in view of the then prevailing situation arising due to the outbreak of Covid-19 pandemic. Vide order dated 25.07.2022, the

to 28.02.2019 at the rate of Rs. 4000/- per month. Thereafter, the matter was adjourned to make payment of rent. On deposit of the rent, the landlord moved an application for issuance of voucher of rent assessed earlier that was deposited by the petitioner-tenants, as respondent No. 2 (applicant therein) wanted to withdraw the same. The said application was allowed vide order dated 03.10.2022 and the case was adjourned to 16.11.2022 for evidence of the landlord at own responsibility. It was also directed that learned counsel for the petitioners in the ejectment petition to supply copy of affidavit of the witness to the opposite counsel well in time so that cross-examination of the witness could be recorded on the same day. On the following herein, the co-landlord viz. Rani Bala daughter of late Krishan Lal deposed as PW-1 and the examination-in-chief was recorded on 16.11.2022. The matter was adjourned to 12.01.2023 for cross-examination of PW-1 Rajni Bala as well as for remaining evidence of the petitioner at own responsibility.

On the adjourned date, the cross-examination of the witness PW-1 Rajni Bala could not be conducted as request for adjournment for cross-examination of PW-1 was made on the ground that due to the death of uncle and aunt a week ago, the tenant Madhu Saini could not contact her counsel and therefore, the counsel was not prepared to cross-examine the witness on the said date. The request for adjournment was opposed by the witness and in view of the same, the petitioner herein sought some time to bring her counsel for cross-examination of PW-1. The said request was allowed by the trial Court. While the petitioner had gone to call her counsel, the matter was taken up and it was ordered that the cross-examination of

PW-1 Rajni Bala to be considered as 'Nil'. It was recorded by the trial Court that it was the second opportunity for cross-examination and the date had been requested in very casual manner. The record further shows that the petitioner returned to the Court with another advocate who filed his fresh power of attorney on her behalf and requested a date for cross-examination of PW-1. However, it was brought to his notice that as the litigant had not returned up before the Court within 10 minutes, the order has been passed whereby cross-examination of PW-1 was treated as 'Nil'.

Heard the learned counsel for the petitioners and with his able assistance perused the impugned order and other documents forming part of the paper-book.

Learned counsel for the petitioners submits that the cross-examination could not take place on 12.01.2023 on account of reasons beyond her control. The trial Court did not even consider the genuine grounds pleaded before the Court that petitioner No. 2 could not contact her counsel due to bereavement of her uncle and aunt a week ago. The said petitioner had also made alternative arrangement by engaging another counsel on the same day but by then the Court time was over and the impugned order had been passed. It is submitted that the petitioners have not availed any unnecessary adjournments and the witness could have been appropriately compensated for the inconvenience caused to her. Keeping in view hot contest between the parties and the said witness was landlord herself and was a very material witness to the case as such, the petitioners seek only one opportunity to cross-examine the said witness which could be subject to payment of costs as may be deemed appropriate in the facts and

circumstances of the present case.

It is contended on behalf of the petitioners that Order 17 Rule 1 CPC deals with grant of time and adjournments, which was considered by this Court in *Mohinder Singh vs. Satnam Singh, 2017(3) RCR (Civil) 569*, wherein it was held that where adjournment and *bona fide* request is made for adjournment, instead of resorting to forfeiture of the right to cross-examine, the Court may grant time by imposing costs. It was pleaded that in fact the cross-examination was treated as nil virtually on the first opportunity itself as despite having been previously ordered by the Court, the affidavit for examination-in-chief was not furnished in advance and the examination-in-chief was recorded by the Local Commissioner on 16.11.2022 i.e. the date preceding passing of the impugned order. The petitioners had taken all steps within their means, which extended to engaging another counsel for cross-examining the witness as the original counsel did not come to the Court for the said purpose for want of preparation for cross-examining the material witness. It is settled law that a party should not suffer on account of negligence or inaction on the part of his/her counsel as was held in *Mohinder Singh's case* (supra).

Coming to the facts of the present case, the cross-examination of the witness PW-1 Rajni Bala is necessary to decide the real controversy between the parties and for a fair trial, a reasonable opportunity should have been granted to the petitioners to cross-examine the said witness subject to payment of costs. By not granting an opportunity to cross-examine the material witness, serious prejudice would be caused to the case and the same would result in miscarriage of justice.

Keeping in view the order proposed to be passed, this petition is being disposed of without issuing notice to the respondents to avoid unnecessarily prolonging the proceedings and burdening the respondents with additional litigation expenses.

Having heard learned counsel for the petitioners and perused the record, this Court is of the view that substantial justice would be met in case one effective opportunity is granted to the petitioners to cross-examine PW-1 Rajni Bala, subject to payment of costs to compensate the inconvenience costs to the said witness. Keeping in view the serious consequences likely to enure on account of not granting the opportunity to cross-examine the material witness, in ***Balkar Singh vs. Nirmal Singh, 2017(1) PLR 684***, this Court had granted one opportunity to cross-examine the witnesses subject to payment of costs to each witness. Similar view was taken by other coordinate Benches in ***Ved Parkash and another vs. Singara Singh and others, 2017(1) Law Herald 538*** and ***Kiran Bala vs. Surinder Sharma, 2017(3) RCR (Civil) 310***.

In light of the above discussion, the efforts by the aggrieved party as noticed by the trial Court and the peculiar facts and circumstances of the case, I am of the considered view that it would be in the interest of justice to allow one more opportunity for cross-examination that would also benefit the Court in discharging its duty, as the veracity of the deposition would get tested as such.

Accordingly, the instant petition is allowed and the impugned order is set aside to the extent that opportunity for cross-examination of PW-1 Rajni Bala was considered as 'Nil' and allow the petitioners one

effective opportunity to cross-examine the said witness subject to payment of Rs.10,000/- as costs, which shall be paid by the petitioners to the said witness.

Needless to observe that after the cross-examination of the said witness, it will be open to the respondents to lead further evidence and for the said purpose one additional opportunity would be granted to the respondents. Their evidence having been closed by voluntary statement would not come in their way for the said purpose.

The parties to appear before the Rent Controller on 17.03.2023, where-after one effective opportunity would be granted to the parties as aforesaid, on a date to be fixed by the Rent Controller subject to payment of costs quantified herein above.

The present revision petition is disposed of in the aforesaid terms.

(VIKAS SURI)
JUDGE

March 3, 2023
Rajeev (rvs)

Whether speaking/reasoned	Yes
Whether reportable	No