

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.271

Case No. : C.R. No.750 of 2019

Date of Decision : September 04, 2023

Bhupinder Kaur and another Petitioners

vs.

Punjab and Sind Bank and another Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Jasraj Singh, Advocate
for the petitioners.

Mr. Ravi Kumar, Advocate
for respondent no.1 – contesting respondent.

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GURBIR SINGH, J. :

1. Challenge in this revision petition under Article 227 of the Constitution of India is to the order dated 10.01.2019, passed by learned Additional Civil Judge (Senior Division), Hoshiarpur (for brevity – the Trial Court), thereby treating cross-examination of PW-1 as ‘Nil’.

2. The brief facts, as culled out from the paper-book, are that respondent no.1 – Punjab and Sind Bank (hereinafter referred to as – the plaintiff) filed a suit for declaration in representative capacity, for setting aside the purported transfer deed executed by petitioner no.1 in favour of petitioner no.2 (hereinafter referred to as – defendant no.2 and defendant no.3 respectively). None appeared on behalf of the defendant no.1 – General Public despite notice. Defendants no.2 and 3 contested the suit, filed written statement and issues were framed. PW-2 before the learned Trial Court was

fully examined. The examination-in-chief of PW-1 was recorded but learned counsel for defendants no.2 and 3 failed to conduct cross-examination of the said witness despite repeated opportunities. So, vide impugned order dated 10.01.2019, cross-examination of PW-1 was treated as 'Nil'.

3. Learned counsel for the defendants no.2 and 3 has argued that the plaintiff sought amendment of the plaint, which was allowed and thereafter, written statement to the amended plaint was filed. Then, plaintiff sought time to file replication and the case was adjourned to 17.12.2018, when replication was filed and the case was adjourned to 10.01.2019. On that date, PW-1 was present. An application for adjournment was made. Learned Trial Court, considering that the witness had appeared on four dates for his cross-examination, declined the application and cross-examination of PW-1 was treated as 'Nil'. In fact, only one opportunity has been granted after completion of amended pleadings.

4. Learned counsel for the plaintiff has submitted that the suit was filed through Mr. Parveen Palial, Senior Manager, Punjab and Sind Bank (PW-1). He tendered his affidavit by way of examination-in-chief but defendants no.2 and 3 failed to cross-examine the said witness. He appeared before the Court for four times but his cross-examination was not conducted. The said witness would have retired from service and now, it may not be possible to procure his presence. So, the present petition deserves dismissal.

5. I have heard learned counsel for the parties and perused the case file.

6. No doubt, there was some omission on the part of defendants

no.2 and 3 in cross-examining the witness of plaintiff. He was bound down for 18.09.2018, on which date plaintiff-Bank moved application for amendment of plaint. The same was allowed and thereafter, written statement to amended plaint was filed. The plaintiff sought adjournment to file replication to the written statement to amended plaint, which was filed on 17.12.2018 and the case was adjourned to 10.01.2019. On that day, PW-1 was present. In fact, after amendment of pleadings, the first date fixed for evidence was 10.01.2019, on which date an application for adjournment was also filed. Learned Trial Court, keeping in view the fact that the witness had appeared earlier as well but was not cross-examined, treated his cross-examination to be 'Nil'.

7. Procedure is hand-maid to the administration of justice and is meant for advancement of justice. The purpose of the Court is to do complete and substantial justice to the parties. The cross-examination of PW-1 is necessary for just decision of the case. Otherwise, defendants no.1 and 2 would suffer adversely.

8. Learned counsel for defendants no.1 and 2 states that only one opportunity may be granted and cross-examination of PW-1 shall be conducted on the same very date.

9. Keeping in view the aforesaid, I am of the considered view that ends of justice would be met if the impugned order is set aside and the petitioners/defendants no.1 and 2 be granted one more opportunity for cross-examination of PW-1, subject to payment of Rs.5,000/- as costs, to be paid to PW-1 by defendants no.1 and 2. It has further been apprised to this Court that the next date fixed before the learned Trial Court is 19.09.2023.

Therefore, it is directed that the plaintiff-Bank shall intimate PW-1 to appear in the Court on 19.09.2023 for the purpose of his cross-examination. If for any reason, the learned Trial Court is not able to conduct the cross-examination on that day, then the same shall be conducted on the very next day. In case PW-1 has retired and plaintiff-Bank is not able to contact him, then, plaintiff-Bank shall inform the learned Trial Court accordingly and the Trial Court may pass the order in accordance with law for summoning the said witness. In that eventuality, when PW-1 will appear, then defendants no.1 and 2 shall cross-examine him on the same day.

10. The revision petition stands allowed in the aforesaid terms.
11. It is hereby made clear that in case of any default, this order shall stand automatically vacated.
12. Pending applications, if any, shall stand disposed of along with this judgment.

September 04, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.