

CR-1199-2023

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

Sr. No.129

CR-1199-2023

Date of Decision: 12.09.2023

INDIRA DEVI AND OTHERS

....Petitioners

Versus

ANU KAPUR

.....Respondent

CORAM: HON'BLE MRS JUSTICE ARCHANA PURI

Present:- Mr. S.P.S. Aulakh, Advocate
for the petitioners.

None for the respondent.

ARCHANA PURI, J. (Oral)

Challenge in the present revision petition is to the order dated 20.01.2023 (Annexure P-4), passed by the Court below, whereby an opportunity of cross-examination of PW-1 and PW-2, was treated as NIL, by the Presiding Officer.

Notice was issued to the respondent, but however, he does not make appearance, despite service having been effected.

Learned counsel for the petitioners heard.

The impugned order was passed on 20.01.2023, which reveals about two witnesses, PW-1, Anu Kapur and PW-2, Pankaj Sharma to be present for the purposes of their cross-examination. However, the concerned Court reached the conclusion that counsel for the defendants is not ready to cross-examine the said witnesses.

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The impugned order dated 20.01.2023 is reproduced in verbatim as hereingiven:

“Today PW-1 Anu Kapur and PW-2 Pankaj Sharma and PW are present before cross examination but he is not cross examined by learned Counsel for the defendants. Therefore, this Court finds no justification to ask witness to further wait for the learned counsel for the defendants. Hence, cross-examine the PW-1 Anu Kapur and PW-2 Pankaj Sharma are treated as NIL. Learned counsel for the plaintiff has closed his evidence on behalf of plaintiff. Now, case stands adjourned to 06.02.2023 for entire evidence of the defendant, be produced at own responsibility on filing of list of witness and DM within three days.”

Perusal of the aforesaid order reveals that counsel for defendants No.1 to 6 had made appearance. Further, contradictory observation has been made that the Court finds no justification to ask the witness to further wait for learned counsel for the defendants. As such, the cross examination of PW-1 and PW-2 was treated as NIL. In fact, there is no reasoning given by the Court as to why the cross-examination is not being conducted and why it is making an observation with regard to no justification to ask the witness to wait further for the counsel for the defendants, more particularly, when the presence of the counsel for defendants No.1 to 6 had already been marked in the impugned order.

Besides the aforesaid, the copies of the zimini orders, which have been placed on record by learned counsel for the petitioners reveal about the case to have been firstly dealt by the Court on 17.12.2021 for

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entire evidence of the plaintiff. However, on that date, there was no witness present and furthermore due to covid, subsequently the case was adjourned and thus on 10.02.2022, the case was received by way of transfer to other Court and no PW was present. Subsequently, on multiple times PW was not present. However, on 01.04.2022, PW-1 Anu Kapur and PW-1 Pankaj Sharma was present and were partly examined and it was on that date, cross examination was deferred on the request of counsel for the defendants. On the next date i.e. 06.05.2022, PW-1 and PW-2 had not made appearance and the case was adjourned for 05.07.2022 and thereupon, on the next date also, they have not made appearance and the case stands adjourned for 01.08.2022. On 01.08.2022, PW-1 Anu Kapur, was partly cross examined and further cross examination was deferred to facilitate bringing of certain documents at the behest of PW-1. However, PW-2 was not present on that day, on account of ill health and the case was adjourned further for 29.08.2022. On 29.08.2022, no PW was present and case was adjourned further for 20.09.2022 and then for 01.11.2022, 09.11.2022 and 01.12.2022, for the same purpose. On 01.12.2022, PW-1 and PW-2 have made appearance, but however, it was observed by the Court that, on account of court time over, the cross-examination could not be conducted. Further, the case was adjourned for 16.01.2023 and thereafter, the impugned order was passed.

From the perusal of the aforesaid zimini orders, it is evident that by and large, on account of witnesses, having not made appearance, they were not examined.

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Considering the aforesaid fact situation and in the interest of justice, the present revision petition is hereby accepted, subject to payment of costs of Rs.5,000/- to be deposited in the Poor Patient Fund of PGIMER, Chandigarh, within a period of 10 days from today onwards and one opportunity is given to the petitioner to conduct the cross-examination of the aforesaid PWs, namely, Anu Kapur and Pankaj Sharma.

In the given circumstances, petitioners are hereby directed to make appearance before the Court concerned, on the next date fixed and thereupon learned Lower Court shall make an endeavour to conduct the cross-examination and complete the same within a period of seven days, after the witnesses make appearance.

Accordingly, the instant revision petition stands disposed of.

12.09.2023
Sonu

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes/No