

108 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

-.-

Civil Revision No. 2193-2023 (O&M)
Date of decision 09.05.2023

Shankar Puri

.....*Petitioner*

versus

Devi Nath and another

.....*Respondents*

Coram: Hon'ble Mr. Justice Rajbir Sehrawat

-.-

Present: Mr. Umesh Narang, Advocate for the petitioner

Ms Sunaina, Advocate for the respondent

-.-

Rajbir Sehrawat, J. (Oral)

CM-6439-CII – 2023

Allowed as prayed for.

Main case

1) The present revision petition has been filed under Article 227 of the Constitution of India, praying for setting aside the impugned order dated 22.12.2022 (Annexure P-13) passed by the Civil Judge (Junior Division), Mohali in civil suit No. 584 of 2018, vide which, the cross examination of the plaintiff's witness PW-6 has been treated as 'nil'.

2) It is submitted by counsel for the petitioner that the Court below has wrongly denied the opportunity to the petitioner to further cross examine the PW-6. Counsel for the petitioner has further submitted that although the petitioner had got several opportunities to complete the cross examination of the witness(es) produced by the plaintiff, however, the

default in completion of the cross examination of the witness(es), including PW-6, happened due to the circumstances beyond the control of the petitioner. On several dates, the local Bar had suspended the work and on some of the occasions; counsel for the petitioner was not available. Therefore, the case had to be adjourned. The petitioner is the contesting defendant in the suit and his case would be prejudiced beyond redemption, in case an opportunity is not granted to cross examine the PW-6. In this view of the matter, the order passed by the trial Court deserves to be set aside and the petitioner deserves to be granted an opportunity to cross examine the PW-6.

3) Per contra, counsel for the respondent has submitted that the petitioner has already availed several opportunities and has wasted the time of the Court. Atleast on four dates, the petitioner failed to cross examine the PW-6 on the pretext that his counsel was not available for conducting cross-examination. Not only that, even the cost was imposed upon the petitioner, still the cross examination of the PW-6 was not completed. Hence, the petitioner does not deserve any leniency and an opportunity to further cross examine the PW-6. Accordingly, it is prayed that the present petition be dismissed.

4) Having heard the counsel for the parties and having gone through the case file, this Court finds that the petitioner had got as many as nine opportunities. Though some of the opportunities were wasted because of the local Bar suspending the work, however, atleast on four opportunities, the petitioner chose to seek adjournments instead of cross examining the PW-6. Not only that, even when the cost was imposed upon

the petitioner, he chose not to cross examine the PW-6. Therefore, this Court does not find any *ex-facie* impropriety in the course adopted by the trial Court.

5) However, it is settled law that the procedural law is hand-made to subserve the purpose of disbursal of substantial justice. In case of conflict between the procedural aspects and the substantial justice, it is the interest of substantial justice, which has to prevail in the Court proceedings. Moreover, since the petitioner himself is the contesting defendant, therefore, his suit would be seriously prejudiced if he is not granted an opportunity to cross examine the PW-6. Hence, it would not be inappropriate to grant one effective opportunity to the petitioner to cross examine the PW-6, however, by putting him under some appropriate financial burden.

6) In view of the above, the impugned order dated 22.12.2022 passed by the Civil Judge (Junior Division) Mohali (Annexure P-13) is set aside and the trial Court is directed to grant one effective opportunity to the petitioner to cross examine the PW-6, subject to payment of Rs.25,000/- as costs, to be deposited with the Poor Patient Welfare Fund, PGIMER, Chandigarh; within a period of fifteen days from today.

7) It is, however, clarified that the trial Court shall grant the said opportunity to the petitioner only on production of receipt of the costs having been deposited, as ordered above.

(Rajbir Sehrawat)
Judge

May 09, 2023
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No