

[216] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1625-2022 (O&M)
Date of Decision : 04.01.2023

Harpreet Singh ...Petitioner

versus

Bhag Singh and othersRespondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. R.S. Randhawa, Advocate for the petitioner.

Mr. Atul Goyal, Advocate for respondent Nos.1 & 2.

None for respondent No.3, *despite service*.

Service of respondent Nos.4 to 8 *dispensed with*
vide order dated 14.11.2022.

B.S. Walia, J. (Oral)

Mr. Atul Goyal, Advocate, puts in appearance on behalf of
respondent Nos.1 & 2 and has filed power of attorney. The same is taken
on record.

[1] Prayer in the petition under Article 227 of the Constitution of
India, is for setting aside order (Annexure P-1) dated 04.04.2022, passed
by the Court of the learned Civil Judge (Junior Division), Ludhiana,
precluding the petitioner from filing any fresh affidavit of witnesses and
further allowing cross-examination of the petitioner only and closing the
petitioner's/plaintiff's remaining evidence.

[2] A perusal of order (Annexure P-1) reveals that the plaintiff-
petitioner was precluded from filing any fresh affidavit of the witnesses in
view of order dated 09.03.2022 and further was allowed cross-
examination of PW-1 Harpreet Singh only on account of his evidence

[3] A perusal of order (Annexure P-43) dated 09.03.2022 on the other hand reveals that while taking into account that no PW was present and request for adjournment was made on behalf of the petitioner-plaintiff on the ground that he was a candidate in elections, in the interest of justice, one absolute last opportunity was granted to the plaintiff to conclude entire evidence on 04.04.2022, subject to payment of costs of Rs.500/- to the defendant while making it clear that in case of failure to conclude evidence, the evidence of the plaintiff would be deemed to be closed by order.

[4] Learned counsel for the petitioner contends that the petitioner had placed on record evidence by way of affidavits of Sukhjiwan Singh and Inderjit Singh Gill on 17.09.2019, Fateh Singh etc and said witnesses were to be cross-examined but except for the petitioner, the other witnesses were not available for cross-examination on 04.04.2022, therefore, the petitioner was only partly cross-examined whereafter, the matter was adjourned to 26.04.2022 for remaining cross-examination of petitioner while ordering remaining evidence as closed.

[5] Learned counsel contends that on 04.04.2022, since only the petitioner had been cross-examined and that too partly, the rejection of the request of the petitioner for production of the other witnesses for cross-examination on the adjourned date was not justified and at best costs could have been imposed. Learned counsel further contends that in case, one opportunity is granted to the petitioner to produce the remaining witnesses, he would produce all said witnesses on whichever date(s) as

appropriate by this Court.

[6] Learned counsel for respondent Nos.1 & 2 states that respondent Nos. 1 & 2 are not averse to the grant of a reasonable opportunity to the petitioner to produce the witnesses whose affidavits were filed for cross examination subject to payment of costs of Rs.15,000/-.

[7] I have considered the submissions of learned counsel.

[8] Admittedly, the petitioner had filed evidence by way of affidavits of the witnesses as referred to above way back in the year 2019 and had himself appeared for cross-examination which was partly conducted on 04.04.2022, whereafter the case was adjourned to 26.04.2022 for further cross-examination of the petitioner, therefore, one opportunity could have been granted to the petitioner to produce the remaining witnesses for cross-examination, subject to payment of costs so as to ensure effective resolution of the question in controversy.

[9] Accordingly, in the light of the position noted above, as well as submissions of learned counsel for the parties, the instant petition is *allowed*. Impugned order (Annexure P-1) dated 04.04.2022 is *set aside*. The petitioner is granted two opportunities to produce the witnesses namely Fateh Singh son of Shri Jagir Singh, resident of Village Tibba, Tehsil and District Ludhiana, Inderjit Singh Gill, ex-Councillor, Ward No.45, resident of Marryland Place, Dugri Road, Ludhiana, Sukhjiwan Singh, son of Shri Kuldip Singh, resident of Atam Nagar, Ludhiana and Record Keeper, Record Room (Revenue) Office of Deputy

besides another date to be granted by the learned trial Court for the said purpose, subject to payment of costs of Rs.10,000/- to respondent Nos.1 & 2. Petition allowed in aforesaid terms.

04.01.2023

'Rajneesh'

(B.S. Walia)

Judge

Whether speaking/ reasoned

:

Yes/No

Whether reportable

:

Yes/No