

211 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2691-2023
DECIDED ON: 22.08.2023

SRI GURU GRANTH SAHIB SEWA SOCIETY (REGD.) AND OTHERS

.....PETITIONERS

VERSUS

FREEMASONS LODGE, CHANDIGARH

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL.

Present: Mr. Jasdeep Kaur, Advocate
for the petitioners.

Mr. Ajaivir Singh, Advocate
for the respondent.

VIKRAM AGGARWAL, J (ORAL)

1. The present revision petition has been preferred, under Article 227 of the Constitution of India assailing the order dated 05.04.2023 (Annexure P-1) passed by the Civil Judge (Junior Division), Chandigarh vide which the cross-examination of PW-1 to be conducted by the petitioner-defendant was ordered to be treated as 'nil'.

2. The facts, as emanating from the paper book, are that a suit for permanent injunction was filed by respondent-plaintiff against the petitioner-defendant. While the matter was pending for the evidence of the plaintiff, PW-1 was present for cross-examination, the examination-in-chief having been recorded on 12.08.2022. However, despite two opportunities having been granted on 09.01.2023 and 05.04.2023, learned counsel representing the petitioner-defendant did not cross-examine the witness.

Observing that the witness was aged 79 years and had been waiting for his

cross-examination to be conducted but the same had not been conducted by learned counsel representing the petitioner-defendant, the opportunity to cross-examine the said witness was ordered to be treated as nil leading to the filing of the present appeal.

3. Learned counsel for the petitioners submits that the order passed by the trial Court is unduly harsh. It has been submitted that counsel for the petitioner-defendant could not cross-examine the said witness on account of *bona fide* reasons and there was no intention to delay the matter. Learned counsel submits that one opportunity be granted to the petitioners-defendants to cross-examine the said witness failing which the rights of the petitioners-defendants shall be adversely affected.

4. On the other hand, learned counsel for the respondent-plaintiff has opposed the prayer made by learned counsel for the petitioners-defendants. It has been submitted that adequate opportunities had been granted to them for cross-examination of the witness but on account of their failure to have done so, the trial Court rightly treated their cross-examination as nil.

5. I have considered the submissions made by learned counsel for the parties.

6. Admittedly, the examination-in-chief of PW-1 was recorded on 12.08.2022 and the case was fixed for 09.01.2023 for cross-examination of the said witness. The witness was not cross-examined and his cross-examination was accordingly deferred to 05.04.2023. On the said date, the witness was present in the Court right from morning till evening but he was not cross-examined. Finding no further justification for adjourning the case for cross-examination of PW-1, the trial Court ordered to treat the

cross-examination of PW1-Charan Pal Singh Sahni as nil. Though strictly speaking, there is no illegality in the order, however, in the considered opinion of this Court, one more opportunity could have been granted for cross-examination of the witness. It is settled law that matters should be decided on merits and parties should normally not be non-suited on technicalities. Be that as it may, I deem it appropriate to grant one opportunity to the petitioners-defendants for cross-examination of PW1- Charan Pal Singh Sahni.

In view of the above, the present revision petition is allowed. The order dated 05.04.2023, passed by the trial Court is set aside. The trial Court is directed to grant one opportunity to the petitioners-defendants to cross-examine PW1- Charan Pal Singh Sahni on a date to be fixed as per the convenience of the trial Court. This shall, however, be subject to payment of ₹5,000/- as costs to the said witness.

22.08.2023

Prince Chawla

**(VIKRAM AGGARWAL)
JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No