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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2617-2023 (O&M)

Date of decision: April 29, 2023

Tirath Singh

....Petitioner

versus

Punjab Urban and Development Authority, Patiala and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. S.S. Swaich, Advocate for the petitioner.

ARUN MONGA, J. (ORAL)

Petition herein *inter alia* is for setting aside impugned order dated 21.04.2023(Annexure P-8) passed by learned Additional Civil Judge (Senior Division), Patiala whereby application filed by petitioner-plaintiff for striking off defence of defendants No.2 and 5 for cross-examination of plaintiff, was rejected.

2. The revision petition is premised on the averments that petitioner-plaintiff filed suit for possession by way of specific performance of agreement to sell dated 23.10.1989 against defendants. Written statement dated 22.02.2018 (Annexure P-2) was filed by defendants No.2 and 5. Defendants No.3, 4, 6 and 7 were proceeded against *ex parte*. Issues were framed on 15.03.2018.

2.1. On 10.09.2018, plaintiff appeared as PW-2. On that day, he was examined-in-chief and cross examination was concluded on 09.01.2019 by learned counsel for defendant No.1. Further, plaintiff was partly cross-examined by learned counsel for defendants No.2 and 5 on various hearing i.e., 09.01.2019, 11.03.2019, 08.04.2019 and 07.05.2019, but they were proceeded against *ex parte* on 12.07.2019.

2.2. Defendants No.2 and 5 filed application seeking to set aside *ex parte* proceedings, which was allowed by learned trial Court vide order dated 18.03.2020 (Annexure P-3) granting only one effective opportunity to defendants No.2 and 5 to

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conclude cross-examination of plaintiff, failing which no opportunity was to be granted.

2.1. Meanwhile, plaintiff went to Canada in December-2020 and came back in November-2021 being pandemic period. Further, plaintiff was cross-examined on 03.08.2022 by learned counsel for defendants No.2 and 5, but same was not concluded and case was adjourned for 25.08.2022. On 25.08.2022, plaintiff moved an application (Annexure P-6) for striking off defence of defendants No.2 and 5 for cross-examination of plaintiff. In view of the statement made by learned counsel for defendants No.2 and 5, learned trial Court adjourned the case for 17.10.2022 for consideration on aforesaid application as well as cross-examination of plaintiff.

2.2. Vide impugned order dated 21.04.2023, learned trial Court dismissed the aforesaid application of plaintiff and adjourned the case to 27.04.2023 for further cross-examination of plaintiff.

3. Learned counsel for the petitioner would contend that defendants No.2 and 5 availed numerous opportunities for cross-examination of plaintiff, but till date they are unable to conclude the same. He would further contend that though vide order dated 18.03.2020, learned trial Court had set aside the *ex parte* proceedings dated 12.07.2019 against defendants No.2 and 5, but still vide impugned order dated 21.04.2023 (Annexure P-8), it granted further time to defendants No.2 and 5 for cross-examination of plaintiff, and also dismissed the application of plaintiff seeking to strike off defence of defendants No.2 and 5 on the ground of their failing to conclude the cross-examination and delaying the proceedings.

4. Given the nature of order being passed, there is no necessity to issue notice to respondents as no prejudice would be caused to them. Notice to respondents is thus dispensed with.

5. I have heard learned counsel for petitioner and perused the record.

6. On a Court query, learned counsel for petitioner-plaintiff candidly states that it is not that petitioner/ plaintiff (PW-2) has any objection in appearing in the

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Court and/ or being cross-examined, however, he states that he has been called 8-10 times for the same purpose though on some hearings, he could not be cross-examined, but notwithstanding, on four effective hearings, he has been cross-examined. In the peculiar premise, he further submits that testimony recorded in the cross-examination would itself be repeated and repetitive questions are being asked only to harass the petitioner.

7. Be that as it may, ordinarily this Court would not have interfered in the revision petition as learned trial Court has full discretion to list cases and govern its procedure for recording evidence, but in the peculiar premise, revision petition is disposed of with the direction that learned Court below shall give only one more opportunity to defendants No.2 and 5 to cross-examine plaintiff/ PW-2 and in case, they fail to do so, their right for further cross-examination of plaintiff shall be deemed to be closed by order of the Court.

7.1. Since petitioner is stated to be residing sometimes in Canada and sometimes in India and keeps shuttling back and forth, in case on the date fixed for his cross-examination, he is not in India, learned trial Court shall make an endeavour to carry out cross-examination through videoconferencing instead of insisting for physical presence of plaintiff. For this of-course, defendants No.2 and 5 shall bear the cost for appearance of plaintiff through video-conferencing.

8. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

April 29, 2023
mahavir

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No