

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.204

Case No. : CR-3346-2023 (O&M)

Date of Decision : July 12, 2023

Bhupender Singh		Petitioner
vs.		
Smt. Dropati Devi (deceased) through her legal heir		Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr. Pawan Garg, Advocate
and Parmod Chauhan, Advocate
for the petitioner.

Mr. Abhimanyu Singh, Advocate
for respondent no.2 (LR of respondent no.1)

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GURBIR SINGH, J. :

1. Prayer in this revision petition filed under Article 227 of the Constitution of India is for setting aside the order dated 09.05.2023 (Annexure P-5), passed by the learned Civil Judge (Junior Division), Bhiwani (hereinafter referred to as - Trial Court).

2. Learned counsel for the petitioner *inter alia* submits that plaintiff's witnesses i.e. PW-1 to PW-4 had already been partly examined as their examination-in-chief was recorded and on the request of counsel for the defendants, the cross-examination of the said witnesses was deferred. The case was adjourned to 16.01.2023. On the said date, witnesses of the plaintiff could not come present and the matter was adjourned to 09.05.2023.

Again on the said date, the aforesaid witnesses did not appear and evidence

of the plaintiff was closed by Court order.

3. Learned counsel for the petitioner further submits that the case got delayed due to outbreak of COVID-19 Pandemic and not due to fault on the part of the petitioner. Even if there was some lapse on the part of the petitioner, the Courts are required to do substantial justice. In support of his contentions, he has relied upon a judgment of this Court in the case of **Hans Raj vs. Surinder Kaur** reported as **2010(2) Civil Court Cases 377 (P&H)**.

4. Learned counsel for the petitioner has thus prayed that one opportunity be granted for cross-examination of the aforesaid witnesses. It has further been submitted that the petitioner shall produce all the witnesses at his own responsibility.

5. Learned counsel for respondent no.2, while opposing the prayer made by learned counsel for the petitioner, has submitted that the petitioner has failed to produce witnesses on many dates. After producing them on one date, when they tendered their affidavits, none of them appeared for their cross-examination on the next date. The case was adjourned. On the next date also, the witnesses did not come present. Since the petitioner failed to produce the witnesses, the learned Trial Court rightly passed the impugned order.

6. Heard.

7. Procedure is the handmaid of justice and is meant for advancement of justice and not to thwart the same. The plaintiff-petitioner in the present case has already produced four witnesses, whose examination-in-chief was recorded, and is also ready to produce them for their cross-examination, at his own responsibility. He has further apprised this Court

that he would not examine any other witness.

8. Accordingly, keeping in view the fact that the parties must not be non-suited on mere technicalities and should be given an opportunity to get justice on merits, in the interest of justice, this revision petition is allowed and the order dated 09.05.2023 (Annexure P-5), passed by the learned Trial Court is hereby set aside. The learned Trial Court is directed to fix the case for cross-examination of the aforesaid four witnesses within one month. The said witnesses shall be produced by the plaintiff-petitioner at his own responsibility and they shall be cross-examined on the same day. In case, the Trial Court is not able to examine the witnesses on that day, then the said witnesses be cross-examined on the very next working day.

9. The petitioner is burdened with costs of Rs.5,000/-, out of which Rs.2,000/- shall be deposited with the concerned District Legal Services Authority and Rs.3,000/- shall be paid to the respondent no.2.

10. Pending applications, if any, shall stand disposed of along with this judgment.

July 12, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes.
Whether reportable ?	Yes/No.