

Sr. No. 259

2023:PHHC:048613

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR-3658-2019

Date of decision: 10.04.2023

Devinder Kaur Mavi

...Petitioner

Vs.

Gurvinder Kaur @ Geeta and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: None for the petitioner.

None for respondent No.2-6 despite service.

ARUN MONGA, J. (ORAL)

Present revision petition is to set aside impugned order dated 06.03.2019 passed by learned Civil Judge (Junior Division), Patiala, whereby, cross examination of PW-3 Gurwinder Kaur was treated as NIL.

2. It is stated in the instant petition that respondent No.1 filed suit for declaration that plaintiff being widow and proforma defendants No.7 and 8 being sons of Satvinder Singh (since deceased) along with proforma respondent No.2 are legal heirs of said Satvinder Singh. Claim in suit was also for separate possession in the suit land.

2.1. As per averment made in the petition, learned counsel for petitioner/defendant No.1 was busy before another Bench and could not come present to cross examine PW-3 when case was called on 06.03.2019. On enquiry from the Reader, it was informed that case had been adjourned for 27.03.2019 and cross-examination of PW-3 has been treated as NIL. Further, petitioner is a resident of a foreign country and was not present in India when the impugned order was passed and, therefore, she could not remain present during hearing. Plaintiff/respondent No.1 had closed her

evidence only on 20.05.2019 and now matter has been adjourned for defendants' evidence. One opportunity may be granted to petitioner to cross-examine PW3 as no prejudice would be caused to respondent No.1.

3. Respondents No.2 and 6 have been duly served. However, despite service, none has put in appearance on their behalf. The sole contesting respondent is respondent No.1. Given the nature of order being passed, there is no necessity to issue fresh notice to respondent No.1/plaintiff and respondents No.7-8 as no serious prejudice would be caused to them. Service upon them is thus exempted, at this stage.

4. There is no representation on behalf of petitioner either. Perused the case file.

5. Rules of procedure are handmaid of justice. They cannot be allowed to thwart real and substantial justice between the parties. The valuable right of litigants to establish their cases by adducing evidence ought not to be taken away by the Court except in a case of their deliberate omission/failure to produce evidence, more so if the other side can be compensated by costs. Prejudice would indeed be caused to petitioner herein, unless afforded an opportunity to cross-examine PW-3. Trial in the suit may lead to unjust consequences in the absence of an opportunity to petitioner-defendant No.1 to cross-examine PW-3 Gurwinder Kaur.

6. In the peculiar circumstances, I deem it appropriate to grant one more opportunity to petitioner-defendant No.1 to cross-examine PW-3, subject to payment of costs of Rs.10,000/-and subject of-course to discretion of learned trial Court to further grant opportunity, in case it so desires depending upon exigencies of work before it. Costs shall be paid to

respondent No.1 herein/plaintiff, which shall be a condition precedent.To
that extent, impugned order is modified and the revision petition is allowed.

- 7. Disposed of, accordingly.
- 8. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

10.04.2023
vandana

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