

2023:PHHC:095069

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-4045-2019 (O&M)
Date of Decision: July 26, 2023

Jyoti

...Petitioner

Versus

Jagdish Parsad and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Nipun Vashist, Advocate
for the petitioner.

Mr.N.R.Dahiya, Advocate
for the respondents.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 27.05.2019 passed by learned Court below, whereby, opportunity for cross-examination was treated as 'Nil', vis-a-vis PW-1 Jagdish Parsad (respondent-plaintiff).

Learned counsel for the parties heard.

During the pendency of the suit for possession, issues were framed on 01.02.2018 and the case was fixed for recording of the evidence of the plaintiff for 24.02.2018. However, on the next date, no PW was present and on that very, an application was filed for seeking permission to

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file replication. For filing reply to the said application, the case was adjourned further for 17.05.2018. Then, on 17.05.2018, learned counsel for defendant No.2 appended no objection, on the margin of the application itself and case was further adjourned, for the same purpose for 17.09.2018. On 17.09.2018, it was adjourned for the same purpose for 21.12.2018. However, on 21.12.2018, the application was allowed, in view of the endorsement having made by learned counsel for defendants, having no objection to the said application and also considering the contents of the application and the replication had already been filed. Upon this, issues were framed and the case was fixed for 27.05.2019 for evidence of the respondent No.1-plaintiff.

On 27.05.2019, the impugned order was passed. Perusal of the same reveals about one PW Jagdish Parsad, having tendered his affidavit on the date fixed, along with certain documents. However, learned counsel, who had made appearance on behalf of defendant No.1, had sought an adjournment, on the ground that other counsel has to cross-examine the witness. It was observed in the impugned order about the counsel to have filed Power of Attorney and to be already appearing on behalf of the defendants and thus, he had not cross-examined the witness and therefore, his cross-examination was recorded as 'Nil'.

The aforesaid seriatim of facts reveals about PW-1 Jagdish Parsad to have made appearance, for the first time, on the date fixed. Even though, it is now submitted that it was intentional on the part of the petitioner-defendant No.1 to have not cross-examined the witness

concerned, but however, there is no such observation made by the Court below. In these circumstances and in the interest of justice, the impugned order dated 27.05.2019 is hereby set aside, subject to deposit of costs of Rs.10,000/-, before concerned District Legal Services Authority, within a period of three weeks from today onwards. Learned Court concerned is hereby directed to provide one opportunity to petitioner-defendant No.1 to conduct cross-examination of PW-1 Jagdish Parsad, in pursuance of ensuring the presence of the witness, on the date fixed, by the Court. However, if for one reason or the other, due to constrained circumstances, the Court concerned is not able to conduct the cross-examination, on the date fixed, then, it shall ensure the conducting of the cross-examination of the said witness, within a period of one week, thereafter.

In view of the above terms, the present revision petition stands allowed.

July 26, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No