

2023:PHHC:089480

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-3941-2023

Date of Decision: 17.07.2023

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CHANDERKANTA SAHNI

.....Petitioner

Versus

SHUKLA KOHLI AND ORS.

.....Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH.

Present: Mr. Aayush Gupta, Advocate for the petitioner.

GURBIR SINGH, J (ORAL)

1. The present revision has been filed under Article 227 of Constitution of India for setting aside the order dated 03.05.2023 (Annexure P-4) passed by Ld. Civil Judge (Jr. Division) Ludhiana in R.A.No.1 of 2014 whereby the evidence of the respondent NO.1 has been closed without granting the petitioner an opportunity to cross examine PW2, PW3 and PW4 and further for setting aside the order dated 05.07.2023 (Annexure P-7) passed by Rent Controller, Ludhiana whereby the application for recalling the said witnesses for cross-examination has also been dismissed.

2. Learned counsel for the petitioner submits that he had separately filed the written statement to the rent application and the other respondents were allowed to cross examine the witnesses but no opportunity was granted to the petitioner to cross examine PW2, PW3 and PW4. Since petitioner is being represented by Counsel and filed reply and contesting the rent application so the petitioner is entitled to cross examine the witnesses.

3. Heard.

4. The order dated 03.05.2023 (Annexure P-4) is reproduced as under:-

“ Today PW-2 Suchi examined completely. Now case stands adjourned to 18.05.2023 for defendant evidence.”

5. Thereafter petitioner moved an application to allow the petitioner to cross examine the witnesses but the same was declined vide impugned order dated 05.07.2023. The operative part of the order is also reproduced as under:-

“This Court is also of the view that earlier the applicant was represented through Sh.Alok Mohindra Advocate and he was very much present at the time of conducting of cross examination of the witnesses but he never pressed for conducting their cross examination which goes on to show that he has waived his right to conduct their cross examination individually and admitted the cross examination conducted by other respondents and defence taken by them as correct and taken the same cross examination on behalf of respondent no.4. Now the present application has been moved on the ground that respondent no.4 has changed her earlier Advocate. The perusal of the record also reveals that vide order dated 13.03.2023 such like application moved by the respondent no.3 was allowed and the abovesaid PWs were recalled. At that time also, the respondent no.4 could move the application but the respondent no.4 failed to move the application. Now after the recalling of abovesaid PWs and conducting of their further cross examination, the instant application has been filed by respondent no.4 who has claimed to be partner of respondent no.1 and respondent no.1 has already conducted the cross examination of abovesaid witnesses. The negligence on the part of Advocate is not at all a ground to allow the present application. Furthermore, the present case pertains to year 2014 and is going for the evidence of the respondent and is a time bound case by Hon'ble High Court. Hence, in view of the present facts and circumstances, no ground is made out to allow the present application as the application has been moved just to linger on the trial. Accordingly, application in hand stands dismissed.”

6. Since petitioner is independently contesting the rent application so it was the duty of the Court to give an opportunity to the petitioner to cross examine the witnesses although duty was also on the part of the Counsel to ask the Court at that very moment that he be allowed to cross examine the witnesses but the counsel for the petitioner also failed to do his duty. A person should not suffer due to negligence on the part of the Counsel, if any, and if a person is impleaded as party, he has a right to defend his case and must be entitled for proper opportunity to defend the same. The present petition is allowed and impugned order is hereby set aside.

7. In the interest of justice, one opportunity be granted to the petitioner to cross examine the witnesses PW2, PW3, PW4 subject to the payment of Rs.5000/- as costs and further no opportunity shall be granted to the petitioner for the said purpose.

8. The learned trial Court is directed to fix one date on which the witnesses shall be produced and petitioner shall cross examine the witnesses on the same very date.

9. It be ensured that question already put to witnesses by other respondents be not repeated.

10. In case respondent No.1 is not satisfied with this order, he can move an application within one month, for recalling of this order.

11. Petition stands disposed of.

(GURBIR SINGH)
JUDGE

17.07.2023
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No