

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

Civil Revision No. 4321 of 2023(O&M)

Date of Decision: 02.08.2023

Baljit Singh & Anr.

...Petitioners

Versus

Sanjeev Bhardwaj & Ors.

...Respondents

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

**Present:- Mr. Vivek K. Thakur, Advocate
For the petitioners.**

KARAMJIT SINGH, J.

1. The present petition has been filed by the petitioners against the order dated 10.11.2022 passed by the Court of Civil Judge (Sr. Divn.), Kapurthala whereby the cross examination of PW Rohit Gupta on behalf of the petitioners/ defendant was treated as 'Nil' in civil suit titled Sanjeev Bhardwaj Vs. Baljeet Singh & Ors. and order dated 18.07.2023 whereby the application filed by the petitioners for recall of the aforesaid order dated 10.11.2022 has been dismissed by the said Court.

2. The counsel for the petitioners while assailing the impugned orders has submitted that respondent No.1/ plaintiff took about 09 opportunities for adducing his evidence, whereas the petitioners have been penalized for single default on their part. The counsel for the petitioners further submits that actually in the first half of 10.11.2022 the counsel for the petitioners was not available and the Court was also informed accordingly but the Court passed the impugned order in morning session. That in the after-noon the counsel for the petitioners appeared and moved an application on the same very day for recall of witness Rohit Gupta for the

purpose of his cross-examination. That, however, the said application was dismissed by the learned trial Court vide order dated 18.07.2023 and the said application remained pending for a period of about 08 months. The counsel for the petitioners further submits that there was no *malafide* intention on the part of the petitioners to delay the proceedings and the petitioners are going to be *prejudiced* if they are not allowed to cross examine PW Rohit Gupta, the marginal witness of the disputed agreement to sell. So, prayer is made that one opportunity be granted to the petitioners to cross-examine PW Rohit Gupta,

3. I have considered the submissions made by counsel for the petitioners.

4. Respondent No.1 has filed suit for possession by way of specific performance of agreement/ writing dated 11.06.2010 against petitioners and respondents No.2 to 5. The suit is being contested by the petitioners and they have denied execution of aforesaid agreement to sell. As has been apprised by the counsel for petitioners, PW Rohit Gupta is attesting witness of the disputed agreement to sell and thus is a material witness. In the given circumstances, if the aforesaid PW is not cross-examined on behalf of the petitioners, it will cause prejudice to the defence set up by the petitioners as it will amounts to admission on their part of the facts stated by the said witness in his examination-in-chief. In my considered opinion the petitioners deserve to be given one last opportunity to cross-examine PW Rohit Gupta. This will also help the trial Court to render substantial justice to the parties.

5. Resultantly, without going into the merits of the case, the instant petition is allowed and impugned orders dated 10.11.2022 (Annexure

P-4) and 18.07.2023 (Annexure P-6) passed by the trial Court are set aside to the extent of cross-examination of PW Rohit Gupta and the trial Court is directed to grant one effective opportunity to the petitioners to cross-examine the said PW subject to costs of Rs.7500/- to be paid by the petitioners to respondent No.1 on the next date of hearing fixed in the trial Court.

6. Keeping in view the nature of order being passed, no notice is required to be issued to the respondents. However, if they feel dis-satisfied with this order, they may move an application to recall the same.

(KARAMJIT SINGH)
JUDGE

02.08.2023

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No