

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

**CM-705 & 707-CII-2023 in/and
CR-3820-2022**

Date of Decision: 17.01.2023

Amritsar Sewa Samiti (Regd.)

....Petitioner

Versus

Ram Narain

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. R.S. Dadwal, Advocate
for Mr. V.K. Sandhir, Advocate
for the applicant-petitioner.

None for respondent, despite service.

ARUN MONGA, J. (ORAL)

CM-705 & 707-CII-2023

For the reasons stated, the applications are allowed subject to all just exceptions. Main case, which is slated for hearing on 22.02.2023, is preponed and taken up on Board for hearing today itself.

CR-3820-2022

Petition herein, *inter alia*, is for setting aside order dated 20.07.2022 whereby the application filed by the landlord/petitioner herein under Order 26 Rule 1 CPC for cross-examination of AW3 Shashi Bhushan Sharma through Commission, being old aged and suffering from chronic diseases, has been declined.

2. As per office report, notice was issued to the respondent and since he was avoiding service affixation was made.

3. I have heard learned counsel for the petitioner and gone through the case file.

4. No doubt, the Court below ought to have satisfied itself *qua* averments made in the application seeking cross-examination of witness

Shashi Bhushan Sharma, who is stated to be a senior citizen being 85-year old and suffering from Glaucoma and age related muscular degeneration of both eyes. However, it would have been appreciable if the Court below given one opportunity to the appellant to produce on record the requisite medical proof in support of the application instead of summarily dismissing the application on the ground that in the absence of any medical proof the applicant had to be necessarily disbelieved.

5. In the present revision petition, the petitioner has placed on record the treatment record of the said witness Shashi Bhushan Sharma contained at Annexure P-4 from which it is borne out that he is a chronic patient and undergoing regular medical treatment. In any case, the petitioner is 85 years of age and that itself is sufficient for appointment of the Commission to record his cross-examination. Needless to say, that cost of the Commission will have to be borne by the petitioner who had moved the application for the cross-examination. In this context, reference may be had to the relevant provisions which are self-explanatory and are reproduced herein below:-

“ORDER XXVI - COMMISSIONS

Commissions to examine witnesses

1. Cases in which Court may issue commission to examine witness - Any Court may in any suit issue a commission for the examination on interrogatories or otherwise of any person resident within the local limits of its jurisdiction who is exempted under this Code from attending the Court or who is from sickness or infirmity unable to attend it:

Provided that a commission for examination on interrogatories shall not be issued unless the Court, for reasons to be recorded, thinks it necessary so to do.

Explanation - The Court may, for the purpose of this rule, accept a certificate purporting to be signed by a registered medical practitioner as evidence of the sickness or infirmity of any person, without calling the medical practitioner as a witness.”

6. In light of the discussion herein above and also the said provisions, the Ld. Trial Court fell in error in rejecting the application moved by the petitioner.

7. In the premise, the impugned order is set aside and the Ld. Trial Court shall proceed in accordance with law by giving one opportunity to the petitioner for cross-examination by appointing a Commission at the cost of petitioner.

8. Disposed of in the above terms.

9. Pending civil miscellaneous applications, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

January 17, 2023

ashish

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No