

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

**Civil Revision No. 4661 of 2023(O&M)
Date of Decision: 18.08.2023**

Madan Mohan**...Petitioner****Versus****Mohammad Ashraf Khan****...Respondent****CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH**

**Present:- Mr. Suresh Singla, Advocate and
Mr. Abhishek Singla, Advocate
For the petitioner.**

KARAMJIT SINGH, J.

1. The present petition has been filed by the petitioner/ plaintiff against the order dated 24.07.2023 (Annexure P-14) passed by the Court of Civil Judge (Jr. Divn.), Malkerkotla whereby the further cross examination of DW.1 Mohammad Ashraf on behalf of the petitioner has been treated as 'Nil' in civil suit titled Madan Mohan Vs. Mohammad Ashraf Khan.

2. The counsel for the petitioner while assailing the impugned order has submitted that on 24.07.2023 the counsel for the petitioner was not available and as such request was made to defer further cross-examination of DW1 to some other date. That, however, the request was declined and the further cross-examination of DW1 was directed to be treated as 'NIL' on behalf of the petitioner. The counsel for the petitioner further submits that this was the first default on the part of the petitioner/ his counsel. The counsel for the petitioner further submits that there was no *malafide* intention on the part of the petitioner to delay the proceedings and the petitioner is going to be *prejudiced* if he is not allowed to further cross examine DW.1 Mohammad Ashraf Khan, who is a material witness. So,

prayer is made that one opportunity be granted to the petitioner to further cross-examine DW.1 Mohammad Ashraf Khan.,

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

4. The petitioner has filed the suit for mandatory injunction against the respondent. The suit is being contested by the respondent. The petitioner has already led his evidence and even defendant was partly examined at which stage the impugned order was passed whereby further cross examination of the defendant (DW.1) has been considered as 'NIL'. DW.1 is a material witness and if no further opportunity is given to the petitioner for the remaining cross examination of DW.1, it will definitely cause great prejudice to the petitioner. In my considered opinion the petitioner deserves to be given one last opportunity to cross-examine DW.1. 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 order dated 24.07.2023 (Annexure P-14) passed by the trial Court is set aside and the trial Court is directed to grant one effective opportunity to the petitioner to further cross-examine the said DW.1 subject to costs of Rs.7500/- to be paid by the petitioner to respondent 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 respondent. However, if he feels dis-satisfied with this order, he may move an application to recall the same.

18.08.2023
Jiten

(KARAMJIT SINGH)
JUDGE

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