

CR-4723-2023 (O&M)

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

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CR-4723-2023 (O&M)

Date of decision : 24.08.2023

Gurdial Singh and others

..... Petitioners

Versus

Kirpal Singh and others

..... Respondents

CORAM : HON'BLE MS. JUSTICE AMARJOT BHATTI

Present: Mr. Amit Arora, Advocate
for the petitioners.

AMARJOT BHATTI J. (ORAL)

Gurdial Singh and others have filed civil revision against impugned order dated 07.08.2023 (Annexure P-6) passed by learned Civil Judge (Junior Division), Tarn Taran vide which the opportunity to cross-examine DW1 to DW3 has been treated as nil.

2. It is argued that petitioners/plaintiffs filed suit for permanent injunction for restraining the defendants No. 1 to 5 from dispossessing the plaintiffs from the suit land measuring 50 Kanals 7 Marlas in the area of village Bath, Tehsil and District Tarn Taran. The copy of plaint is Annexure P-1. The defendants No. 1 to 3 appeared and filed their written statement, which is Annexure P-2. The issues were framed by the trial Court on 29.04.2022 and the case was fixed for plaintiffs' evidence. The plaintiffs closed the evidence as per order dated 26.05.2023 and the case was fixed for defendants' evidence. The defendants examined three witnesses on 01.07.2023 and the case was adjourned for 13.07.2023 for cross-examination. On 13.07.2023 these witnesses were not

cross-examined and their cross-examination was treated as nil. Thereafter, the plaintiffs filed application Annexure P-3 with the prayer to set aside the order dated 13.07.2023. The application was contested. The reply filed by the defendants/respondents is Annexure P-4 and ultimately, the application was allowed vide order dated 02.08.2023, which is Annexure P-5. They were granted one opportunity to cross-examine these witnesses, subject to cost of Rs. 500/-. On the date fixed i.e. 07.08.2023, the counsel for the petitioners/plaintiffs was not well, therefore, the witnesses could not be cross-examined, as a result, their cross-examination was treated as nil. The copy of impugned order dated 07.08.2023 is Annexure P-6. It is prayed that the witnesses could not be cross-examined for the reasons beyond the control of petitioners/plaintiffs. Even if there is any lapse on the part of the counsel for the petitioners/plaintiffs, they cannot be allowed to suffer. It is prayed that the impugned order dated 07.08.2023 (Annexure P-6) may kindly be set aside and the other party can be compensated by imposing cost.

3. I have considered the arguments and have gone through the record. The pleadings of the parties as well as the orders passed by the learned Civil Judge (Junior Division), Tarn Taran from time to time are placed on the record. The defendants examined three witnesses which were not cross-examined and their cross-examination was treated as nil as per order dated 13.07.2023. Later on, the aforesaid order was set aside, subject to cost and one opportunity was granted to cross-examine these witnesses on 07.08.2023. Even on this date, when the counsel for petitioners/plaintiffs did not cross-examine the witnesses, the impugned order dated 07.08.2023 (Annexure P-6) was passed. The aforesaid facts clearly indicate that on account of non-availability of the counsel for the petitioners/plaintiffs, the defence witnesses who were appearing time and again could not be cross-

examined. At the same time, it cannot be ignored that the petitioners/plaintiffs cannot be made to suffer on account of lapse on the part of their counsel. No purpose would be served by giving notice to the respondents/defendants as it will further lead to delay in the disposal of the case and unnecessary expenditure for the respondents/defendants. It is rightly pointed out that the contesting respondents/defendants can be fairly compensated by imposing cost on the petitioners/plaintiffs. Therefore, taking a lenient view, the impugned order dated 07.08.2023 (Annexure P-6) passed by learned Civil Judge (Junior Division), Tarn Taran is accordingly set aside and the petitioners/plaintiffs are granted one effective opportunity to cross-examine all the defence witnesses on the date fixed by the trial Court, subject to payment of cost of Rs. 20,000/- to the contesting respondents/defendants.

The civil revision is accordingly, disposed of.

(AMARJOT BHATTI)
JUDGE

24.08.2023

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