

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

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CR No.4136 of 2022
Date of Decision: 05.01.2023

Gurdev Singh (since deceased) through his LR Gurjit Singh
...Petitioner

Versus

Naib Singh and others
...Respondents

2.

CR No.5325 of 2022

Gurdev Singh (since deceased) through his LR Gurjit Singh
...Petitioner

Versus

Naib Singh and others
...Respondents

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present :- Mr. Abhishek Singla, Advocate
for the petitioner in both the revision-petitions.

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MEENAKSHI I. MEHTA, J. (Oral)

Both the afore-captioned revision-petitions are being taken up together for discussion and adjudication as these are inter-linked and have arisen out of the same Civil Suit. **CR No.4136 of 2022** has been preferred by the petitioner (the LR of the plaintiff) to lay challenge to the order dated 14.09.2022 (Annexure P-13) as passed by learned Civil Judge (Junior Division), Talwandi Sabo (for short 'the trial Court') in Civil Suit No.453 of 2017 titled as '*Gurdev Singh vs. Naib Singh and others*', whereby the application, moved by respondents-defendants No.1 to 5 (here-in-after to

be referred as ‘the applicants’) with a prayer to appoint the Commissioner for recording the cross-examination of DW4 named Major Singh, has been allowed and **CR No.5325 of 2022** has been filed by him (petitioner) to assail the order (Annexure P-11), handed down by the trial Court on 04.10.2022 in the said Suit, for treating the cross-examination of the above-named DW4 as ‘nil’.

2. As per the brief factual-matrix culminating in the filing of the present revision-petitions, plaintiff Gurdev Singh filed a Civil Suit against the applicants and their co-defendants. The afore-said DW4 appeared in the Court on 18.05.2022 and only his examination-in-chief had been recorded on that day. Thereafter, the applicants moved the above-said application, while averring that DW4 had fallen ill and had undergone some surgery and he has been advised the bed rest and this application has been allowed vide the impugned order dated 14.09.2022. However, the Commissioner reported to the trial Court that learned counsel for the plaintiff (petitioner) did not reach at the time and place fixed for the cross-examination of DW4. Resultantly, the trial Court passed the impugned order dated 04.10.2022 as discussed in the preceding paragraph.

3. Today, Mr. Sherry K. Singla, Advocate, has put in appearance on behalf of the applicants (respondents-defendants No.1 to 5) and he has submitted his Memorandum of Appearance in the Court and the same has been placed on the file.

4. I have heard learned counsel for the petitioner as well as learned counsel for the applicants (respondents-defendants No.1 to 5) in the

present revision petitions, at the preliminary stage and have also perused the files carefully and shall be advertent to the discussion on the merits of each petition separately.

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5. Learned counsel for the petitioner contends that the applicants moved the afore-referred application, without annexing any cogent material therewith to substantiate their plea qua the inability of DW4 to appear in the Court due to his having undergone some surgery but however, the trial Court has not considered this aspect properly and has erroneously allowed the said application vide the impugned order and therefore, the same is not legally sustainable and deserves to be set-aside.

6. Per-contra, learned counsel for the applicants argues that the said DW4 is about 90 years old and due to some age related problems, he had to undergo the surgery and due to this reason, he is, now, no more in a condition to physically appear in the Court for his cross-examination and it being so, the impugned order is perfectly logical and reasonable.

7. The factum regarding the above-mentioned age of DW4 goes undisputed between the parties. Even if the applicants had not produced any medical record of this witness in the trial Court to corroborate their version regarding his having undergone some surgery, even then, keeping in view his age, the plea of his inability to appear in the Court, cannot be construed to be unusual, unreasonable or doubtful at all. Moreover, learned counsel, representing the petitioner before the trial Court, is supposed to cross-examine the said witness (DW-4) and if the petitioner so desires, he

can also accompany his counsel at that time and in such an eventuality, the recording of the cross-examination of DW4 by the Commissioner, cannot be held to be detrimental to the interest or rights of the petitioner at all.

8. In view of the fore-going discussion, this Court is of the considered opinion that the impugned order (Annexure P-13) does not suffer from any illegality, infirmity, irregularity or perversity so as to call for any interference by this Court. Resultantly, the revision petition in hand, being bereft of any merit, stands dismissed.

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9. Learned counsel for respondents-defendants No.1 to 5 fairly submits that he has no objection in setting aside the impugned order dated 04.10.2022 and in allowing DW-4 Major Singh to be cross-examined by or on behalf of the petitioner through the Commissioner.

10. Keeping in view the afore-discussed fact, the instant revision petition is allowed and the impugned order dated 04.10.2022 (Annexure P-11) is hereby set-aside and the petitioner is granted one more effective opportunity to cross-examine the said DW4, by way of the recording of his depositions by the Commissioner. The parties, through their counsel, are directed to appear before the trial Court on 18.01.2023 and the trial Court shall fix the date and time, not later than two (02) weeks thereafter, for the above-mentioned purpose.

05.01.2023
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(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable: No