

135 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-5241-2023
DECIDED ON: 11.09.2023

JAGMIT SINGH GHOTRA

.....PETITIONER

VERSUS

AMRIK SINGH AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL.

Present: Ms. Jasleen Kaur Chandhok, Advocate
for the petitioner.

VIKRAM AGGARWAL, J (ORAL)

1. Challenge in the present revision petition is to the order dated 17.08.2023 passed by the Civil Judge (Junior Division), Kapurthala (Annexure P-1) vide which the request of the petitioner-plaintiff to examine him through Video Conferencing was rejected in view of the fact that the Canadian Consulate had requested for recording of the said witness on Tuesdays or Saturdays between 9:30 pm to 6:00 am and the petitioner-plaintiff was directed to appear in the witness box for conclusion of his cross-examination by 22.08.2023 failing which the evidence of the petitioner-plaintiff would be closed by order.

2. A civil suit was filed by the petitioner-plaintiff against the respondents-defendants No.1 to 6. During the course of the trial, the petitioner-plaintiff appeared as PW-2 before the trial Court but his cross-examination could not be concluded. Under the circumstances, an application was moved seeking permission to conduct the cross-examination of the petitioner-plaintiff through Video Conferencing. It was averred in the application that he had got three weeks leave which had come to an end and,

therefore, he had to return back on 29.04.2023. A request was made that his cross-examination be recorded through Video Conferencing and that he would be willing to bear the expenses for the same. This application was allowed vide order dated 18.05.2023 (Annexure P-2). However, when the matter was listed for cross-examination of the petitioner-plaintiff on 17.08.2023, the trial Court, after considering the letter from the Consulate of Canada, that the evidence could be recorded from 9:30 pm to 6:00 am on Tuesdays or Saturdays, held that the petitioner-plaintiff would be at liberty to get his amount refunded and would be required to physically appear in the Court for his cross-examination. For the said purpose, one final opportunity was granted to him and he was called upon to appear on 22.08.2023 failing which the evidence would be closed by orders of the Court.

3. Learned counsel for the petitioner has submitted that the petitioner was present in India for three weeks and during this period, his cross-examination could not be concluded. The petitioner-plaintiff had to return back to Canada as he was not granted further leave by the company. Learned counsel has submitted that as per Rule 12.7 of the Video Conferencing Rules for Courts enacted by this Court, the Court concerned was entitled to pass suitable directions concerning the timings and schedule of Video Conferencing as the circumstances of a particular case may warrant. It has been submitted that the trial Court could have accordingly recorded the evidence beyond the Court hours also. Learned counsel has contended that the trial Court further gave only four days time to the petitioner-plaintiff to appear before the trial Court for recording of his cross-examination which is practically not possible as the petitioner-plaintiff is not granted leave frequently. It has been submitted that the petitioner-plaintiff would be able to

from the said witness, no other evidence has to be led.

4. I have considered the submissions made by learned counsel for the petitioner.

5. It is not in dispute that the application moved by the petitioner-plaintiff for recording of his evidence by way of Video Conferencing was allowed by the trial Court on 18.05.2023. However, a perusal of the impugned order dated 17.08.2023 shows that a letter was received from the Consulate of Canada as per which it was requested that the evidence could be recorded only on Tuesdays or Saturdays and that too from 9:30 pm to 6:00 am. Under the circumstances, the trial Court directed the petitioner-plaintiff to appear physically before the trial Court for recording of his cross-examination. In the considered opinion of this Court, though Rule 12.7 does grant liberty to the trial Court to make adjustments in the timings if the circumstances so warrant, this Court does not deem it appropriate to bind down the trial Court to record evidence within the time period fixed by the Consulate of Canada i.e. from 9:30 pm to 6:00 am. However, the short period of five days given by the trial Court for recording of the evidence of the petitioner-plaintiff is not justified considering the fact that the petitioner-plaintiff is employed in Canada and would come to India as and when he is granted leave. No doubt, the petitioner-plaintiff has to make arrangements if he has to appear as a witness and the suit cannot function solely as per the convenience of the petitioner-plaintiff. However, a balance would have to be struck to ensure that the evidence of the petitioner-plaintiff is recorded and at the same time, undue delay is not caused in disposal of the case.

6. In view of the above, the present revision petition is disposed of with a direction to the trial Court to either record the evidence of the

petitioner-plaintiff within the time period fixed by the Consulate of Canada, if

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so found convenient and practical by the trial Court or to defer the case for evidence of the petitioner-plaintiff and giving him some adequate time to appear for conclusion of his evidence. The trial Court may also consider the genuineness of the request being made by the petitioner that he would be unable to appear before February and take a decision accordingly by not going into technicalities only for the purposes of disposal of the case.

11.09.2023
Prince Chawla

(VIKRAM AGGARWAL)
JUDGE

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