

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

CR-5116-2023

Date of Decision : 04.09.2023

Ravi Sondhi

..... Petitioner

Versus

Ankit Verma and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Mr. Kanwar Rajan, Mr. Summit Kaushal and
Mr. Saurabh Munjal, Advocates
for the petitioner.

VIKRAM AGGARWAL, J (ORAL)

The present revision petition has been preferred under Article 227 of the Constitution of India assailing the order dated 17.03.2023 (Annexure P-1) vide which the opportunity of the petitioner-defendant No.1 to cross-examine PW2 Shiv Verma was ordered to be treated as 'nil' and the order dated 19.07.2023 (Annexure P-2), vide which the application under Order 18 Rule 17 read with Section 151 CPC, filed by the petitioner-defendant No.1 against the said order dated 17.03.2023 was dismissed.

The facts, as emanating from the paper book, are that a suit (Annexure P-3) was filed by the respondent-plaintiff Ankit Verma for specific performance, mesne profits and permanent injunction with regard to Plot No.3, MLU Area, Sector 109, Mohali Hills, Mohali

measuring 300 square yards (fully described in the plaint) (hereinafter referred to as 'the plot in dispute') against the present petitioner-defendant No.1 and proforma respondent No.2. During the course of the trial, while the evidence of the plaintiff was going on, on 17.03.2023, one witness namely PW2 Shiv Verma was present. However, since his cross-examination could not be conducted, the opportunity of the present petitioner to cross-examine the said witness was treated as 'nil'. Subsequently, an application under Order 18 Rule 17 read with Section 151 CPC for recalling the order dated 17.03.2023 (Annexure P-1) and for grant of another opportunity was filed by the petitioner-defendant No.1 which was also dismissed vide order dated 19.07.2023 (Annexure P-2), leading to the filing of the present revision petition.

Learned counsel for the petitioner has strenuously urged that the trial Court has gravely erred in treating the opportunity of the petitioner to cross-examine PW2 Shiv Verma as 'nil'. Reference has been made to the interlocutory orders starting from 21.07.2022 when the issues were framed till the passing of the impugned order dated 17.03.2023 and it has been submitted that there was no attempt to delay the proceedings as has been erroneously observed by the trial Court. It has been submitted that though in the order dated 17.03.2023, it has been mentioned that PW2 Shiv Verma had been completely examined, factually the opportunity of the petitioner to cross-examine the said witness had been ordered to be treated as 'nil'. Learned counsel submits that the absence of the counsel for the

petitioner-defendant No.1 on the said date of hearing was on account of a genuine difficulty and there was no intention to delay the trial Court proceedings. Learned counsel submits that one opportunity may be granted to the petitioner-defendant No.1 to cross-examine PW2 Shiv Kumar, failing which his rights shall be adversely affected.

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

Since the decision of the present revision petition shall not affect the rights of the respondents, notice is not being issued to them.

The issues in the case were framed on 21.07.2022. On the first two dates i.e. 17.08.2022 and 19.09.2022, no witness of plaintiff-respondent No.1 was present. On 10.10.2022, three witnesses were present who tendered their affidavits in their examination-in-chief. Their cross-examination was deferred at the request of the counsel for the defendants. On 09.11.2022, the Presiding Officer could not take up the case as she was on leave. The matter was taken up on 24.11.2022. On the said date, though three witnesses of plaintiff-respondent No.1 were present but on request of learned counsel for the petitioner-defendant No.1, their cross-examination was deferred and the case was adjourned. On subsequent two dates of hearing i.e. on 20.12.2022 and 12.01.2023, PW3 Mohan Kumar and PW1 Ankit Verma were examined completely. On 10.02.2023, PW2 Shiv Verma was not present. On 17.03.2023, the said witness was present but a request for

adjournment is stated to have been made on behalf of the counsel for the petitioner-defendant No.1. Though the order dated 17.03.2023 does not refer to the opportunity of the petitioner to cross-examine PW2 Shiv Verma having been ordered to be treated as ‘nil’, in the subsequent order dated 19.07.2023, it has been stated so.

Be that as it may, a perusal of the interlocutory orders shows that there was no attempt by the petitioner-defendant No.1 to delay the proceedings, though a request for adjournment had been made on a couple of occasions.

In the considered opinion of this Court, the trial Court should have granted one more opportunity to the petitioner-defendant No.1 to cross-examine PW2 Shiv Verma.

In view of the above, the present revision petition is allowed. The orders dated 17.03.2023 and 19.07.2023 (Annexures P-1 and P-2 respectively) insofar as the opportunity of the present petitioner to cross-examine PW2 Shiv Verma was ordered to be treated as ‘nil’, are set aside. The trial Court is directed to grant one opportunity to the present petitioner to cross-examine PW2 Shiv Verma on a date to be fixed as per its convenience.

(VIKRAM AGGARWAL)
JUDGE

04.09.2023
mamta

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