

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-5111-2023
DECIDED ON: 25.09.2023

SARWAN SINGH
.....PETITIONER

VERSUS

SUKHRAJ SINGH
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH.

Present: Mr. Vikas Gupta, Advocate
for the petitioner.

SANJAY VASHISTH, J (ORAL)

1. By way of present revision petition, order dated 24.08.2023 passed by the Court of Additional Civil Judge (Senior Division), Patti (learned trial Court) has been challenged, whereby, request of the plaintiff for recalling its witness i.e. PW-2 – Resham Singh Deed Writer for conducting the cross-examination, at the instance of the defendant has been declined.
2. Mr. Joginder Pal Devgan, Advocate, puts in appearance on behalf of respondent and files his power of attorney in Court today, which is taken on record, subject to all just exceptions. Office to tag the same at appropriate place in case file.
3. Counsel for the petitioner submits that plaintiff filed a suit for recovery of an amount of Rs.9,00,000/- along with its interest. Said

institution of the suit is based upon the documentary evidence i.e. pro note dated 27.08.2015, scribed by Resham Singh (PW-2).

Further submits that said witness appeared in witness-box and submitted his affidavit Ex.PW-2/A for the purpose of its examination-in-chief but for the purpose of cross-examination, said witness was deferred for the reason that defendant's counsel was not available. To authenticate the submission, counsel for the petitioner/plaintiff produces the copy of the statement regarding tendering of the affidavit Ex.PW-2/A on 29.07.2019. Same is taken on record and for the purpose of convenience, relevant part is reproduced hereunder:-

“PW 2 Resham Singh aged 60 son of Major Singh deed writer Patti, Tehsil Patti, District Tarn Taran.

On SA.

I tender into evidence my duly sworn affidavit Ex.PW2/A along with documents Ex.P1, Ex.P1/A and Ex. P2, which may be read as part and parcel of my examination in chief in my evidence.

XXXXXXXXXXXX as learned counsel for the defendant is not available.

RO&AC

*(Munish Garg)
ACI(SD)/Patti
29.07.2019
UID No.PB0310”*

Counsel for the petitioner further submits that in fact,

thereafter, several opportunities were granted to the plaintiff for producing the evidence but never any specific order was passed in regard to the producing of the witness i.e. PW-2 – Resham Singh, for the purpose of the cross-examination at the instance of the defendant.

Even, defendant also never made request either oral or in writing to call for the witness for the purpose of cross-examination of the said witness, which was deferred on 29.07.2019 for the reason that defendant's counsel was not available.

4. Counsel for the petitioner further submits that after the deferring of the witness for the purpose of cross-examination by the Court on 29.07.2019, there was a pandemic COVID-19 situation, which continued for more than two years. Therefore, said fact was left unnoticed by the plaintiff that he is required to produce Resham Singh for the purpose of his cross-examination at the instance of the defendant. However, at this stage, when it was noticed, a request was made but same was declined by the trial Court vide impugned order dated 24.08.2023.

Thus, he submits that if one opportunity is granted, it will meet out the ends of justice and by affording said opportunity to the plaintiff, rights of the defendant are not going to get prejudiced.

5. On the other hand, learned counsel appearing on behalf of the respondent-defendant, while opposing the contention of counsel for the petitioner, vehemently submits that the impugned order has been passed, as per law. In fact, more than 25 opportunities have been afforded to the plaintiff for the purpose of leading his evidence. Thus, it is a fault

of the plaintiff himself that he failed in producing the said witness for the purpose of conducting of his cross-examination at the instance of the defendant. For the said fault, the trial of the suit should not be prolonged.

6. I have heard counsel from both the sides and perused the record available before me and am of the view that trial Court perhaps, could not notice the situation in its totality, because there is nothing mentioned about the two years' period i.e. of the pandemic of COVID-19 situation, which was just after the few months of deferring of the witness on 29.07.2019 for the purpose of cross-examination, on the ground that the counsel for the defendant was not available. Moreover, it is noticed by this Court also that the plaintiff's evidence has been closed on the request of the plaintiff himself.

All this shows that the requirement of producing the witness Resham Singh i.e. PW-2 for the purpose of cross-examination was forgotten by him and therefore, due to inadvertent default, even if considered to be at his instance, said witness could not be produced before the Court for his cross-examination at the instance of the defendant.

7. Taking note of the situation and especially when the suit is for recovery of an amount along with its interest, keeping the petition pending for such a small issue would be rather detrimental to the rights of the defendant.

8. This Court is of the view that cross-examining of plaintiff is not only crucial for uncovering the truth, but also for adhering to the

principles of Indian Evidence Act, 1872. Thus, cross-examination of plaintiff is necessary for the proper and just adjudication of the issue involved without causing prejudice to the rights of any of the parties to *lis*.

The view taken by this Court is fortified by the observation made by Hon'ble Justice P.N. Bhagwati in case titled as **"State of Kerala v. K.T. Shaduli Grocery Dealer, (1997) 2 SCC 777"**, wherein His Lordship succinctly encapsulated the essence and purpose of cross-examination, which reads as under:

"(...) cross-examination is one of the most efficacious methods of establishing truth and exposing falsehood".

9. Thus, the impugned order dated 24.08.2023 is set aside to the extent of declining the request of the petitioner/plaintiff for producing PW-2 – Resham Singh for his cross-examination.

10. Consequently, plaintiff is directed to produce Resham Singh on **10.10.2023** before the learned trial Court for the purpose of cross-examination and thereupon, due opportunity, in accordance with law, would be afforded to the defendant to conduct the cross-examination, which undoubtedly would be at the option of the defendant.

11. With the aforementioned terms recorded here above, **present petition stands allowed.**

(SANJAY VASHISTH)
JUDGE

25.09.2023
Lavisha

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>