

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CM-8454-CII-2023 in/and

CR-4479-2022 (O&M)

Date of decision: 11.05.2023

Naresh Kumar @ Jebi

...Petitioner

VS

Avtar Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Arjun Veer Sharma, Advocate,
For the petitioner.

ARUN MONGA, J. (ORAL)

CM-8454-CII-2023

This is an application for staying the proceedings before learned Trial Court during pendency of the revision petition.

Instead of rendering piecemeal decision, on the application forstaying the proceedings, it is deemed appropriate that main case itself is heard. Main case is preponed and taken up on Board for hearing today itself. Next date fixed in the main case i.e.,30.05.2023 stands cancelled. Registry to do the needful.

Application stands disposed of, accordingly.

Main case

Revision petition herein *inter alia* is to set aside impugned order dated 06.09.2022 passed by learned Additional Civil Judge (Senior Division),Samrala, vide which the application moved by petitioner/defendant No.1 filed under Order 18 Rule 17 read with Section 151 of CPC for recalling the witness for his cross-examination, was dismissed.

2. Learned counsel for the petitioner submits that application filed by petitioner/defendant No.1 for recalling PW-1 was wrongly dismissed by learned trial Court since the witness was only partly cross-examined by defendant No.2 on 07.05.2019. Thereafter, on 09.04.2022, cross-examination of the witness was completed by defendant No.2 and case was adjourned to 10.05.2022 for documentary evidence. Then on 31.05.2022, i.e., on the very first date for defendants' evidence, the application for recalling the witness was filed by petitioner/defendant No.1, but the same was dismissed vide impugned order.

3. I have heard learned counsel for petitioner and gone through the case file.

4. Given the nature of order being passed, there is no necessity to issue notice to respondents, as no serious prejudice would be caused to them. Notice to respondents is thus dispensed with.

5. Trite law it is that procedure is a handmaid of justice and, ought not be given precedence at the cost of subjugation of substantive justice. The valuable right of litigants to cross-examine the witnesses of opposite side ought not to be taken away by the Court except in a case of their deliberate omission/failure. More so, if the other side can be compensated with costs. Prejudice would indeed be caused to petitioner herein, unless afforded an opportunity to cross-examine the witness of plaintiff. Trial in the suit may lead to unjust consequences in the absence of an opportunity to the petitioner-defendant No.1 to cross examine PW-1 Avtar Singh.

6. In the peculiar circumstances, I deem it appropriate to grant one more opportunity to petitioner-defendant No.1 to cross-examine PW-1, subject to payment of costs of Rs.5,000/- and subject of-course to discretion of learned trial Court to grant further opportunity, in case it so desires depending upon exigencies of work before it. Costs shall be paid to respondent No.1/plaintiff. To that extent, impugned order is modified and the revision petition is allowed, dispensing with notice to respondents.

7. Disposed of, accordingly.

8. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

11.05.2023

Vandana

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No