

CR-5641-2023 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.131

CR-5641-2023 (O&M)

Date of Decision: 25.09.2023

VIKRAM GOGNA

....Petitioner

Versus

NITESH GOEL AND ANOTHER

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Mr. Jarnail Singh Saneta, Advocate
for the petitioner.

ARCHANA PURI, J. (Oral)

The petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India, thereby seeking setting aside of the order dated 19.07.2023, passed by learned Lower Court, whereby the cross-examination of PW, Nitesh Goel (who is plaintiff before learned Lower Court), has been considered as '*Nil*'.

Heard learned counsel for the petitioner.

Relevant facts, as culled from the paperbook are that the suit for recovery of Rs.15,80,000/-, was filed by Nitesh Goel, against the present petitioner. During the pendency of the suit, for recording of the evidence of the plaintiffs i.e. the present respondents, the impugned order dated 19.07.2023 was passed, wherein it was observed that the witness, Nitesh Goel, was present, but however, learned counsel for the defendant was not ready to conduct the cross-examination and even, on the last date of hearing, witness, Nitesh Goel, was present and learned counsel for the defendant did not turn up for conducting the cross-examination.

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Perusal of the previous zimini orders reveal that the case, at first instance, was fixed for recording of the evidence of the plaintiff on 01.03.2023 and no PW was present. As such, the case was adjourned for 31.03.2023. On 31.03.2023 also, no PW was present and the case was adjourned further for 25.04.2023 for PWs, as well as consideration on the application under Order 38 Rule 5 CPC. On 25.04.2023 again, no PW was present and the case was adjourned, for the same purpose, for 11.05.2023, on which date again, no PW was present and the case was adjourned further for 22.05.2023.

On 22.05.2023, witness, Nitesh Goel, was present, but however, his cross-examination was not conducted and the case was adjourned further for cross-examination on 03.07.2023. Again, on 03.07.2023, the aforesaid witness was present, but he was not cross-examined by learned counsel for the defendant and the case was adjourned further for 19.07.2023. On the next date i.e. 19.07.2023, the impugned order was passed.

From the seriatim of the zimini orders, as observed aforesaid, it is evident that several times, prior to examination of Nitesh Goel, the adjournments were sought, at the behest of the plaintiff, who had not produced any witness. In the given circumstances, the present revision petition is hereby accepted and the impugned order dated 19.07.2023 is set aside, thereby giving one opportunity to the petitioner to conduct cross-examination of Nitesh Goel, subject to payment of Rs.20,000/- as costs, which shall be deposited in the '*Poor Patient Funds, PGIMER, Chandigarh*'.

The date fixed before learned Lower Court is stated to be 26.09.2023. In the given circumstances, the petitioner is directed to make

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appearance before learned Lower Court on 26.09.2023 i.e. tomorrow and in consonance with this judgment, learned Lower Court shall secure the presence of the witness, Nitesh Goel, in order to conduct his cross-examination, within a period of ten days thereafter.

It is made clear that before conducting of the cross-examination, the petitioner shall place on record the receipt with regard to deposit of costs, before learned Lower Court.

Photocopy of this order be given to learned counsel for the petitioner, under the signatures of Superintendent/Bench Secretary of this Court.

Accordingly, the instant revision petition stands disposed of.

25.09.2023
Himanshu

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes/No