

126.

2023:PHHC:147185

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

CR-6823-2023 (O&M)

Date of decision: 20.11.2023

BALJINDER KAUR AND ORS

.... Petitioners

Versus

JAGDISH SINGH BRAR AND ORS

.... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Malkeet Singh Balianwali, Advocate, for the petitioners.

GURBIR SINGH, J. (Oral)

1. Prayer in this revision petition filed under Article 227 of the Constitution of India is for setting aside the orders dated 02.08.2023 and 24.08.2023 (Annexure P-1 colly) passed by learned Civil Judge (Junior Division), Ludhiana, whereby the evidence of the petitioners-defendants has been closed by order.

2. The brief facts, as culled out from the petition, are that the respondent No.1-plaintiff, filed a civil suit for partition of suit property, as mentioned in the head note of the plaint, and for permanent injunction, against the petitioners-defendants. After the closure of evidence of plaintiff, defendant stepped into the witness-box as DW-1 by tendering her affidavit on 31.05.2022 and was cross-examined on 16.11.2022. Thereafter, on 03.01.2023, DW2-Prem Chand tendered his affidavit and the case was adjourned for his cross-examination, but vide order dated 02.08.2023, the

trial Court closed the evidence of DW2 and vide order dated 24.08.2023, the evidence of the petitioners-defendants was also closed by observing that despite availing 22 effective opportunities, they failed to conclude their evidence.

3. Learned counsel for the petitioners submits that the petitioners-defendants want to produce DW2-Prem Chand whose affidavit has already been tendered on 03.01.2023 by way of examination-in-chief. Even he appeared on 12.05.2023, but his cross-examination could not be recorded and on 02.08.2023, the evidence was ordered to be closed. If this witness is not cross-examined by the other party, then his statement cannot be read.

4. Learned counsel for the petitioners submits that the petitioners-defendants would be satisfied if one opportunity is granted to them, then they would produce the said witness at their own responsibility for the purpose of cross-examination.

5. I have heard the submissions of learned counsel for the petitioners and have gone through the paper book.

6. Although there is some inaction on the part of the petitioners, but the other party also failed to cross-examine the witness when he appeared at the time of tendering his affidavit for examining-in-chief and one date afterwards, keeping in view the fact that technicalities should not come in the path of justice and if one opportunity is granted to the petitioners to produce DW2 for cross-examination, no prejudice would be caused to the other side, which may be compensated with costs.

7. So, in the interest of justice, present petition is disposed of and orders dated 02.08.2023 and 24.08.2023 (Annexure P-1 colly) passed by

learned Civil Judge (Junior Division), Ludhiana are hereby set aside, with a direction to the trial Court to give one opportunity to the petitioner-defendant to produce the witness i.e. DW-2 Prem Chand at own responsibility but subject to payment of costs of Rs.5,000/- including costs of Rs.2,500/- already imposed by the trial Court, to respondent No.1-plaintiff. The said witness shall be cross-examined on the date fixed before the trial Court and if said witness is not cross-examined on date fixed, then the said witness shall be cross-examined on very next date. No further opportunity shall be granted for this purpose.

7. If the respondent No.1-plaintiff is not satisfied with this order, he can move an application for recalling of this order within 30 days.

8. Pending application, if any, shall stand disposed of.

(GURBIR SINGH)
JUDGE

November 20, 2023

sanjeev

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No