

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

128

CR-6298-2023

Date of decision: 02.11.2023

Ramesh Lal

....Petitioner

Versus

Davinder Kumar

...Respondent

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Deepak Verma, Advocate for the petitioner.

AMARJOT BHATTI, J.

1. The petitioner has filed revision petition under Article 227 of the Constitution of India for setting aside the impugned orders dated 20.10.2022 (Annexure P-2) and subsequent order dated 25.09.2023 (Annexure P-4) whereby the right of the present petitioner/defendant to file written statement to the plaint was struck off and the opportunity to cross examine the witness was treated as NIL.

2. The learned counsel for the petitioner argued that the present petitioner/defendant is real brother of respondent/plaintiff. The plaintiff Davinder Kumar has filed petition under Section 6 of Specific Relief Act, 1963 for restoration/to surrender the possession of property as detailed in the petition along with relief of permanent injunction. The present petitioner was not given appropriate opportunity to file his written statement and his defence was struck off vide order dated 20.10.2022 (Annexure P-2). The learned trial

Court framed issues and the case was fixed for plaintiff evidence. Thereafter, the statement of Davinder Kumar plaintiff was recorded as PW1 and his cross-examination was deferred. Ultimately, vide impugned order dated 25.09.2023 (Annexure P-4) the cross examination of Davinder Kumar plaintiff was treated as NIL. In fact the counsel did not inform the present petitioner about the status of the trial, therefore, the witness could not be cross-examined. The material right of the present petitioner is involved. He has engaged other counsel to contest his case and thereafter, he came to know about the aforesaid proceedings regarding which the present civil revision has been filed. It is prayed that in the interest of justice, he may be given one opportunity to file his written statement as well as to cross-examine the plaintiff and the aforesaid impugned orders may kindly be set aside.

3. I have considered the arguments and have gone through the record. The learned counsel for the petitioner has placed on record the relevant zimni orders passed by the learned trial Court from time to time. Considering the nature of relief sought by the present petitioner, no purpose would be served by giving notice to the respondent as it will further lead to delay and unnecessary litigation expenditure to the respondent/plaintiff. I have carefully gone through the orders passed by the learned trial Court from time to time. The copy of plaint is Annexure P-1. In this case both the parties are real brothers. The present petitioner appeared through his counsel Mr. Baljinder Sodhi, Advocate. The copy of impugned order dated 20.10.2022 (Annexure P-2) indicates that despite given last opportunity to file the written statement, it was not filed and ultimately, the defence of the defendant was struck off. Thereafter, issues were framed and the trial in the

said civil suit continued. The aforesaid impugned order dated 20.10.2022 (Annexure P-2) was never challenged during this period until the present civil revision has been filed. Therefore, considering the conduct of present petitioner I do not find a fit case to set aside the impugned order dated 20.10.2022 (Annexure P-2) vide which the defence of the present petitioner was struck off. Therefore, the relief claimed pertaining to impugned order dated 20.10.2022 (Annexure P-2) is declined.

The other aspect of the present case is the impugned order dated 25.09.2023 (Annexure P-4) vide which cross-examination of the plaintiff was treated as NIL. The perusal of zimni orders indicate that the statement of Davinder Kumar PW-1 was recorded on 25.11.2022 and thereafter the present petitioner was called upon to cross examine the witness on two dates. The file was taken up in routine i.e. on 16.01.2023 and 23.02.2023. Thereafter, on 01.04.2023 another counsel was engaged who again requested for adjournment to cross-examine the plaintiff. The case was adjourned for 04.05.2023, 13.07.2023, 25.08.2023 and ultimately on 25.09.2023 the cross - examination was treated as NIL. The aforesaid orders indicate that on two occasions the case was adjourned with the consent of both the counsel. Therefore, in view of aforesaid facts a lenient view is taken and the civil revision filed by the present petitioner is partly allowed by setting aside the impugned order dated 25.09.2023 (Annexure P-4) vide which the cross-examination of Davinder Kumar PW-1 was treated as NIL. The learned counsel for the petitioner pointed out that the next date fixed in this case is 24.11.2023. The learned trial Court is directed to give one effective opportunity to cross-examine PW-1 subject to payment of cost of Rs.5,000/- to the respondent Davinder Kumar.

The civil revision preferred by the petitioner is accordingly disposed of.

Pending application(s), if any, stands disposed of accordingly.

02.11.2023
Sunil Devi

(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No