

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

136

CR-6394-2023

DECIDED ON:25th October, 2023

SANJAY MAKKAR AND ANOTHER

....PETITIONERS

VERSUS

JAGMOHAN KAUR AND OTHERS

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Ridhi Bansal, Advocate and
Ms Sidhi Bansal, Advocate
for the petitioner.

SANDEEP MOUDGIL, J. (Oral)

1. This petition has been preferred at the behest of defendants arising out of a civil suit for recovery to the tune of Rs.17,30,000/- asserting that the present petitioners are tenants in the premises describable as front portion, measuring 440 sq. ft., Ground Floor of SCO No. 76, Sector 20-C, Chandigarh . The civil suit has been filed by the respondents/plaintiffs that the petitioners/defendants had failed to pay rent from 07.12.2019 onwards, which further accrued on 7th day of each subsequent month and also the advance monthly rent, as per lease deed dated 26.07.2016.

2. The petitioners/defendants are contesting the said suit wherein, during the course of evidence of PW-1-Jagmohan Kaur came present on 28.04.2023 and completed her examination-in-chief and the case was deferred to 12.05.2023 for her cross-examination. On 12.05.2023 instead of initiating

the cross-examination of PW-1, examination-in-chief of PW-2 Harmanpreet Singh was conducted who is one of attesting witnesses of the lease deed dated 06.07.2016 and the case was again deferred for 17.07.2023 for his cross-examination.

3. It is asserted on behalf of the petitioners that effectively the case was listed for the purpose of cross-examination of both the witnesses i.e PW-1-Jagmohan Kaur and PW-2-Harmanpreet Singh on 17.07.2023 for the first time but due to ill-health of the mother of the petitioners-defendants on the said date, an application for an adjournment was moved and the proceedings were adjourned to 27.07.2023 for the same purpose.

4. Since the mother of the petitioners-defendants had not yet recovered, another adjournment was sought on 27.07.2023 by moving an application but instead of considering the request, so made, the case was kept for post lunch session and further deferment of cross-examination of PW-1 and PW-2 was declined.

5. Since due to unavoidable circumstances i.e on account of ill-health of the mother of the petitioners-defendants, the Court below has closed the opportunity of the petitioners-defendants to cross-examine PW-1 and PW-2. The instant petition has come up for hearing praying for grant of another opportunity.

6. Having perused the sequence of adjournments and the reasons, thereof, that too with a sufficient cause shown to the Court below by moving an appropriate application, on account of medical ailment of petitioners' mother instead of acting in a mechanical way the trial Court ought to have

granted more opportunity, that too, wherein the case is still at the initial stage, having conducted only examination-in-chief of PW-1 and PW-2.

7. Even otherwise by closing down the right of the petitioners-defendants to cross-examine the said witnesses, would definitely prejudice their rights and if one or two more opportunities are granted then no prejudice is likely to be caused to the plaintiff-respondents, which can be termed as irreparable loss by any stretch of imagination.

8. The Court below was expected to record a justifiable reason, if shown on behalf of the petitioners-defendants for granting further time to cross-examine PW-1 and PW-2, which was duly available in the form of an application properly filed showing the medical ailment of the petitioners' mother and there is no reason to disbelieve the same especially in the light of having not controverted the said fact by the plaintiffs-respondents. Even otherwise, it may also not bestow any benefit for an unlimited span whatsoever to the petitioners for making such false averment except one or two dates to complete the evidence. The Court below also at the same time need to record a reason to disbelieve the plea raised by the petitioners-respondents for an adjournment by recording reasons in the order. In the absence of recording of any reason, to disbelieve the assertion of the petitioners for seeking adjournment to cross-examine of PW-1 and PW-2, no doubt it happened consecutively on two occasion. The denial of right to cross-examine in such a situation is against the very judicial principle that justice is not only to be done but it should seems to have been done.

9. It is also to be borne in mind that the adjournment between two

dates is of 10 days only, during which their mother might not have yet recovered. Since there was sufficient cause available with the Court below, which needs to be believed as no other material or opposition to such fact has come on record from the plaintiff-respondents, the order dated 27.07.2023 deserves to be set aside to the extent vide which it has ordered the closure of opportunity of cross-examination and recorded the cross-examination of PW-1 and PW-2 as 'Nil' while discharging the witnesses. It is in the light of afore-said observations, this Court direct to the trial Court that two effective opportunities shall be granted to the petitioners-defendants to cross-examine PW-1 and PW-2 for conducting the cross-examination of PW-1 and PW-2 and in case even on the next two dates the cross-examination is not concluded the same may continue on the next date but thereafter, no further adjournment for the same cause shall be made available to the petitioners-defendants. It is hereby, clarified to leave no chance for any confusion for the trial Court itself that two opportunities must be granted and the petitioners-defendants shall complete their cross-examination in the next two dates of hearing positively but if it deems proper in the given circumstances, only in that eventuality cross-examination be allowed on the third date of hearing that should be last opportunity in any case whatsoever.

10. However, to maintain the interest of justice and law of equity, I cannot loose sight of the circumstance that witnesses PW-1 and PW-2 would again have to step up into witness box and may cause some inconvenience to them but there will be no prejudice to occur to the case of the plaintiffs-respondents. The petitioners-defendants are under an obligation to compensate

that party who will definitely face some inconvenience for attending the Court again for no fault of their. Hence, the petitioners-defendants are directed to pay the cost of Rs.10,000/-, which shall be disbursed in equal proportions by the plaintiffs-respondents, if they are more than one.

11. Accordingly, the order dated 27.07.2023 is set aside.
12. In the afore-said directions, the present petition stands disposed of.

(SANDEEP MOUDGIL)
JUDGE

25.10.2023
sham/Rajeev (rvs)

Whether speaking/reasoned	Yes
Whether reportable	No