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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

-.-

Civil Revision No. 5981-2022

Date of decision 05.01.2023

Gursewak Singh

.....*Petitioner*

versus

Harjinder Singh and others

.....*Respondents*

Coram: Hon'ble Mr. Justice Rajbir Sehrawat

-.-

Present: Mr. Amit Arora, Advocate
for the petitioner

-.-

Rajbir Sehrawat, J. (Oral)

The present revision petition has been filed by the petitioner, assailing the order dated 01.10.2022 (Annexure P-5), passed by the Civil Judge (Senior Division), Tarn Taran, vide which, the application filed by the petitioner/defendant for setting aside the order dated 14.03.2022 passed by the trial Court, whereby the opportunity granted to cross examine PW1-Harjinder Singh has been treated as nil.

It is submitted by counsel for the petitioner that the trial Court has wrongly treated the cross examination of PW-1 - Harjinder Singh on behalf of the petitioner, to be nil. Counsel for the petitioner has submitted that because of the accident of the husband of the counsel representing the defendant/petitioner before the trial Court, his counsel could not appear on two dates. On the one date, an intimation was sent to the Court concerned through Clerk of the Advocate. However, on the second date, because of

unavailing circumstances neither counsel for the petitioner could be present in the Court nor her Clerk could make any request for adjournment. But the petitioner had moved an application for granting opportunity to cross examine PW-1 - Harjinder Singh, however, the said application was also rejected by the trial Court. Counsel has also submitted that the petitioner and his counsel before the trial Court had not avoided the cross examination of the material witness intentionally or deliberately. The situation arose only on account of the circumstances beyond the control of the petitioner or his counsel. Counsel for the petitioner has further submitted that the petitioner is the main contesting defendant in a suit; which is qua ownership of the property. Therefore, if the petitioner is not granted an opportunity to cross examine the material witness, then the case of the petitioner will be seriously prejudiced. Hence, the petitioner deserves, at least, one effective opportunity to cross examine the material witness PW1.

Having heard counsel for the petitioner and having perused the case file, this Court finds that the trial Court had granted two opportunities to the petitioner so as to cross examine PW1 - Harjinder Singh. Undisputedly, on the second date, even a request for adjournment was not made before the trial Court. Therefore, this Court does not find any *ex-facie* illegality or impropriety in the order passed by the trial Court. However, the Rules of procedure are handmade to advance interest of substantial justice and not to thwart or obstruct the same. Moreso, since the petitioner is the contesting defendant in the suit, therefore, if at least one opportunity is not granted to him to cross examine PW1, then the case of the petitioner would be prejudiced beyond redemption. Therefore, it would not

be unjustified if one effective opportunity to cross examine PW1 - Harjinder Singh is granted to the petitioner; but by putting him under an appropriate financial burden.

In view of the above, the present petition is allowed and the impugned order dated 01.10.2022 passed by the Civil Judge (Senior Division) Tarn Taran (Annexure P-5) is set aside and the trial Court is directed to grant one effective opportunity to the petitioner to cross examine PW1 – Harjinder Singh, subject to payment of Rs.10,000/- as costs, to be deposited with the Poor Patient Welfare Funds at PGI, Chandigarh; within a period of fifteen days from today.

It is, however, clarified that the trial Court shall grant the said opportunity to the petitioner only on production of receipt of the costs having been deposited, as ordered above.

(Rajbir Sehrawat)
Judge

January 05, 2023
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No