

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CR-6630-2023

Date of Decision: 6.11.2023

Kabal Singh

....Petitioner

VERSUS

Harjinder Singh

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Lupil Gupta, Advocate,
for the petitioner.

KARAMJIT SINGH, J.

Present revision petition has been filed by the plaintiff-petitioner against the order dated 4.7.2023 passed by the learned trial Court whereby an application filed by the respondent/defendant under Section 151 of CPC for permission to cross-examine PW1-Kabal Singh, PW2-Chaman Lal and PW3-Nirmal Singh was allowed subject to costs of ₹ 1000/-.

2. Counsel for the petitioner, while assailing the impugned order, *inter alia* submits that PW1, PW2 and PW3 were examined-in-chief but their cross-examination was deferred on the request of the counsel for the respondent-defendant and the case was fixed for 22.9.2021 for that purpose. However, even on 22.9.2021, all the 3 PWs were present but not cross-examined and accordingly, the trial Court treated their cross-examination on behalf of the respondent-defendant as Nil. It is further contended that subsequently, the trial Court reviewed the said order and permitted the respondent-defendant to cross-examine said PWs subject to cost vide impugned order which is contrary to the statutory provisions. It is further

contended that the learned trial Court was having no jurisdiction to recall its previous order dated 22.9.2021 and thus, the impugned order is liable to be set aside.

3. I have considered the submissions made by the counsel for the petitioner.

4. Order XVIII Rule 17 CPC and Section 151 CPC read as follows :

ORDER XVIII

Hearing of the suit and examination of witnesses

X X X

17. Court may recall and examine witness.—The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.

151. Saving of inherent powers of Court.—Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.”

5. Civil Court has got jurisdiction under Order XVIII Rule 17 CPC to recall any witness who has been examined and further examine him as the Court thinks fit. In the instant case, cross-examination of PW1, PW2 and PW3 is necessary and required for the purpose of rendering complete justice and for proper adjudication of the subject matter in dispute. Further, power under Section 151 CPC can be exercised by the Court if ends of justice so warrant and to prevent abuse of the process of Court and Court

can exercise its discretion to permit recall of witness for further examination/cross-examination. In the instant case, learned trial Court invoked its inherent power under Section 151 CPC and passed the impugned order being necessary for the ends of justice. It is also settled that technical rules or procedure should not be given precedence over the substantial justice. The Courts are meant to facilitate and to meet ends of justice.

6. In view of above, it cannot be said that any illegality has been committed by the learned trial Court in passing the impugned order as cross-examination of PW1 to PW3 is essential for just decision of the case. Only irregularity is that while passing the impugned order, the learned trial Court should have imposed reasonable costs to compensate the petitioner.

7. In light of above, without commenting on the merits of the case, while maintaining the decision of the learned trial Court, vide which, the application filed by the respondent under Section 151 CPC was allowed, the impugned order is hereby modified and the respondent is directed to pay cost of ₹ 7000/- to the petitioner on the next date of hearing fixed in the suit apart from cost of ₹ 1000/- imposed by the learned trial Court which is to be deposited by the respondent with DLSA concerned. It is further made clear that only one effective opportunity is given to the respondent to cross-examine PW1, PW2 and PW3 subject to payment of aforesaid costs.

8. The revision petition stands disposed of in the aforesaid terms.

(KARAMJIT SINGH)
JUDGE

November 6 , 2023

Paritosh Kumar

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No