

2023:PHHC:143160

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CR-6733-2023.

Date of Decision: 09.11.2023

Baljinder Singh and another

....Petitioners.

Versus

Shangara Singh

....Respondent.

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Vikas Gupta, Advocate for petitioners.

Lalit Batra, J.(Oral)

This civil revision petition under Article 227 of the Constitution of India has been filed by petitioners/defendants impugning the legality of order dated 27.09.2023 (Annexure P-1) rendered by learned Civil Judge (Junior Division), Tarn Taran, vide which application moved by petitioners/defendants for recalling of DW-1 ASI Sewak Singh for conducting his cross-examination afresh in their presence, was dismissed.

2. Learned counsel for petitioners/defendants *inter alia* contends that respondent/plaintiff filed civil suit for permanent injunction restraining petitioners/defendants from interfering in his peaceful possession and from dispossessing him forcibly from the suit property i.e. two shops. Petitioners/defendants filed written statement and contested the suit. Issues were framed

and after closure of respondent/plaintiff's evidence, petitioners/ defendants summoned MHC Police Station Sarhali. ASI Sewak Singh, A/MHC Police Station Sarhali appeared as DW-1 alongwith record of FIR No.63 dated 05.06.2018 under Sections 323, 324 and 326 read with Section 34 IPC, Police Station Sarhali, whose examination-in-chief was recorded on 02.08.2023, but his cross-examination was deferred. Later on i.e. after lunch break, when counsel for petitioners/defendants reached the Court to enquire about the next date of hearing, he was shocked to know that cross-examination of said witness has already been conducted by the counsel for respondent/ plaintiff. Thereafter, on 21.08.2023, an application under Section 151 CPC for recalling of DW-1 ASI Sewak Singh was moved by petitioners/defendants for the purpose of his cross-examination and to discard the cross-examination which was conducted in the absence of petitioners/defendants and their counsel and the said application was wrongly dismissed by learned Trial Court. Learned counsel for petitioners/defendants further contended that the case is still pending adjudication before learned Trial Court and cross-examination of above said witness in the presence of petitioners/defendants is very much necessary for complete and effective adjudication of the civil suit.

3. I have heard learned counsel for petitioners/defendants and have carefully gone through the file.

4. There is absolutely no merit in the arguments of learned counsel for petitioners/defendants. A bare perusal of impugned order dated 27.09.2023 which reiterates miscellaneous order dated 02.08.2023 reveals that learned

counsel for petitioners/defendants was present in the Court when cross-examination of DW-1 ASI Sewak Singh was conducted by counsel for respondent/plaintiff. Even otherwise, a bare perusal of testimony of DW-1 ASI Sewak Singh (Ex.P-4) recorded on 02.08.2023 by learned Trial Court depicts that above said witness was summoned at the instance of petitioners/defendants and his examination-in-chief was recorded and he was duly cross-examined by learned counsel for respondent/plaintiff. Since examination of above said witness was conducted in the presence of learned counsel for both the parties, question of recall of said witness for the purpose of cross-examination afresh does not arise at all. Thus, learned Trial Court has rightly dismissed the application of the petitioners/defendants.

5. In view of above, there being no illegality or perversity in the order dated 27.09.2023 of learned Trial Court calling for any intervention, the instant petition is dismissed.

(LALIT BATRA)
JUDGE

09.11.2023
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No