

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.121

Case No. : C. R. No. 6919 of 2023

Date of Decision : November 17, 2023

Gurbux Kaur

.... Petitioner

vs.

Gurdev Kaur and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Mandeep Singh Sachdev, Advocate
for the petitioner.

* * *

GURBIR SINGH, J. :

1. Challenge in this revision petition is to the order dated 20.09.2023 (Annexure P-1), passed by learned Civil Judge (Junior Division), Jalandhar (hereinafter referred to as – the Trial Court), whereby application filed by the plaintiff/petitioner for re-calling Harkrishan Lal, Nambardar (PW-2), for his further cross-examination by defendants/respondents, has been dismissed.

2. The brief facts, as culled out from the petition, are that the plaintiff/petitioner filed suit for declaration and mandatory injunction. The suit is being contested by the defendants. After framing of issues, plaintiff/petitioner led evidence and also examined Harkrishan Lal, Nambardar as PW-2. His part cross-examination was recorded and the case was deferred for his further cross-examination. Thereafter, the said witness did not appear and the plaintiff/petitioner closed his evidence.

3. Learned counsel for the petitioner has argued that respondents no.1 to 4 filed written statement. They also filed counter-claim. Learned counsel for the petitioner has further contended that at the time of going through the entire evidence, while preparing the arguments, it has transpired that evidence of Harkrishan Lal, Nambardar (PW-2) was not completed. He was partly cross-examined on 21.02.2019 and thereafter, neither he came nor any order was passed by the learned Trial Court for procuring his presence. Since he has not been fully cross-examined, so, objection would be raised that his evidence cannot be read in evidence. The cross-examination is to be conducted by other party. He has further submitted that if one more opportunity is granted to the plaintiff/petitioner to produce the aforesaid witness Harkrishan Lal, Nambardar (PW-2), he shall produce him at his own responsibility and the plaintiff/petitioner would not claim any other opportunity.

4. I have heard the submissions of learned counsel for the petitioner and have gone through the case file.

5. Procedure is the hand-maid to the administration of justice and is meant for advancement of justice and not to thwart the same. The plaintiff/petitioner, in the present case, wants to re-call one witness, whose examination-in-chief and part cross-examination was recorded but the case was deferred for his further cross-examination. It has also been submitted that the plaintiff/ petitioner is ready to produce the said witness for his further cross-examination, at his own responsibility. He has further apprised this Court that no further opportunity shall be claimed.

6. Accordingly, keeping in view the fact that the parties must not

be non-suited on mere technicalities and should be given an opportunity to get justice on merits, in the interest of justice, this revision petition is allowed and the order dated 20.09.2023 (Annexure P-1), passed by the learned Trial Court is hereby set aside. The learned Trial Court is directed to fix the case for cross-examination of the aforesaid witness within one month. The said witness shall be produced by the plaintiff/petitioner at his own responsibility and he shall be cross-examined on the same day. In case, the Trial Court is not able to examine the witness on that day, then the said witness be cross-examined on the very next working day.

7. The plaintiff/petitioner is burdened with costs of Rs.3,000/- to be deposited with the concerned District Legal Services Authority.
8. If the respondents are not satisfied by this order, they can challenge the same by filing application within 30 days from today.
9. Pending applications, if any, shall stand disposed of along with this judgment.

November 17, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.