

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Revision No. 6905 of 2023 (O&M)

Date of Decision: 17.11.2023

Hartar Singh Sangha (deceased) through LRs

...Petitioner

Versus

Pritam Singh & Ors.

...Respondents

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

**Present:- Mr. Atul Jain, Advocate
For the petitioner.**

KARAMJIT SINGH, J.

1. The present petition has been filed by the petitioner/ decree holder against the order dated 14.09.2023 (Annexure P-6) and another order of the same date (Annexure P-7) passed by the Court of Civil Judge (Sr. Divn.), Kapurthala whereby the cross examination of OBW1-Baljinder Singh on behalf of the petitioner was treated as 'Nil' and further the application filed by the petitioner on the same very day for recalling of aforesaid order (Annexure P-6) was also dismissed with cost of Rs.1,000/-.

2. The brief facts of the case are that the eviction petition filed by the petitioner under Section 13-B of East Punjab Rent Restriction Act, 1949 was allowed by Rent Controller, Kapurthala vide order dated 11.12.2014 against one Pritam Singh. The petitioner filed an application for execution of the said eviction order wherein third party objections were filed by Dr. Jagpal Kaur Sangha wherein the Executing Court framed issues and thereafter fixed for evidence of the objector. The counsel for objector examined in chief OBW1- Baljinder Singh and for his cross-examination on behalf of the petitioner, the case was adjourned to 14.09.2023 and on that

very date the cross-examination of the said witness on behalf of the petitioner was treated as NIL vide order (Annexure P-6), on the ground that at that time one Junior Advocate appeared on behalf of the petitioner and requested for pass-over as the senior counsel was on his way. In the later part of the same day the Senior counsel appeared on behalf of the petitioner and filed an application for recalling order Annexure P-6 but the said application was also declined by the Court concerned vide order (Annexure P-7).

3. The counsel for the petitioner, *inter alia*, submits that there was no intention on the part of the petitioner to delay the proceedings in the execution application and that the case was called early in the morning at about 10:30 a.m. on 14.09.2023 but at that time Senior Advocate on behalf of the petitioner was on his way to the Court premises and accordingly Junior counsel made request for pass over but the learned Executing Court in an hasty manner passed the impugned order (Annexure P-6). That in the later part of the same day, the Senior Counsel appeared on behalf of the petitioner and made a request in writing for recall of order (Annexure P-6) but even the said request was also declined vide order (Annexure P-7). The counsel for the petitioner further submits with the passing of the impugned orders, the rights of the petitioner/ decree holder are severally prejudiced. So, prayer is made that one opportunity be granted to the petitioner to cross-examine PBW1- Baljinder Singh.

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

5. The Court under Section 151 CPC is having inherent powers to do substantive justice. The rules of procedure are to help the Court in delivery of justice. Truth can only be unearthed if parties are permitted to

lead proper evidence and opportunity is also granted to the other party to cross examine the witnesses examined by the opponent in order to check their veracity and for proper adjudication of the litigation. In the instant case, the petitioner is decree holder in whose favour the eviction order was passed in the year 2014 and till date the petitioner is unable to get the possession of the premises in question, as someone has raised third party objections. In case the petitioner is not allowed to cross-examine the witnesses appearing on behalf of third party objector, it will prejudice the rights of the petitioner. In my considered opinion the petitioner deserves to be given one last opportunity to cross-examine OBW1-Baljinder Singh but the same will be subject to payment of cost. The said course will advance the cause of justice and also help the Court to render substantial justice to the parties.

6. Resultantly, without going into the merits of the case, the instant petition is allowed and impugned orders dated 14.09.2023 (Annexures P-6 and P-7) are set aside subject to payment of costs of Rs.4000/- which is to be paid by the petitioner to the opposite party on the next date of hearing. The learned Executing Court shall give one effective opportunity to the petitioner to cross-examine OBW1-Baljinder Singh and for that purpose a specific date has to be fixed by the Executing Court.

7. Keeping in view the nature of order being passed, no notice is required to be issued to the respondents. However, if they feel dis-satisfied with this order, they may move an application to recall the same.

(KARAMJIT SINGH)
JUDGE

17.11.2023
Jiten

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