

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

**CR-470-2024 (O&M)
Date of decision:29.01.2024**

Jitender Kumar

... Petitioner

Vs.

Rattan Lal

... Respondent

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Himanshu Joshi, Advocate for the petitioner.

...

SUKHVINDER KAUR, J.

1. The instant revision petition has been filed by petitioner/plaintiff against the order dated 04.12.2023 (Annexure P-3) passed by the Additional Civil Judge (Sr. Division), Narnaul, whereby cross-examination of the witnesses of the objector was recorded as NIL without giving the proper opportunity.

2. The brief facts are that a suit for specific performance for an agreement to sell dated 22.08.2006 was filed by plaintiff/petitioner. The said suit was decreed on 28.08.2012. During the pendency of the suit, the objector got the sale deed executed qua the suit property on 09.07.2009. The JD/respondent raised the said issue in execution and the trial Court dismissed the objections vide order dated 16.01.2019. Thereafter, the objections were filed by Smt. Sharda Devi on the ground of being a bonafide purchaser.

3. As per the impugned order, the execution petition was filed on 13.01.2015. Earlier the said execution was stayed by this Court which was

later on vacated and the case was adjourned to 31.07.2023 for A.W.s. The trial Court vide order dated 29.09.2023 granted adjournment to the decree holder. Further the case was adjourned to 20.11.2023 for compromise, if any or for further proceedings. However, on the said date, no compromise was effected between the parties and the decree holder requested for further adjournment. The trial Court recorded examination-in-chief of the witnesses i.e. AW2 and AW3, who were present on the said date and their cross-examination was recorded as NIL opportunity given when decree holder did not cross-examine them. Hence, the present revision has been filed by the petitioner/decreed holder.

4. Counsel for the petitioner has contended that the main file had been sent to the counsel appearing before this Court. So he prayed for an adjournment on this ground as he could not cross-examine the said witnesses without the brief, but the said fact and circumstance was not considered by the trial Court. He has further contended that delay tactics are being adopted just to gain time. In case the impugned order is not set aside, the petitioner who is the decree holder and whose decree has been upheld upto this Court and has attained finality, shall be frustrated. He has prayed that one effective opportunity may be granted to the decree holder on which date he shall complete the cross-examination of the aforesaid witnesses.

5. I have heard learned counsel for the petitioner at length and has perused the records.

6. Though there is no infirmity in the impugned order, yet it will be appropriate and shall be in the interest of justice if one effective opportunity is afforded to the petitioner/decreed holder for conducting cross-

examination of AW2 and AW3. The delay on the part of the petitioner in conducting cross-examination of AW2 and AW3 can be compensated by imposing cost. No purpose is likely to be served by serving notice to the respondent as it will result in unnecessary delay. Considering all these aspects, the impugned order is set aside, subject to payment of cost of Rs.10,000/- to the respondent/JD. Trial Court will grant one effective opportunity to the petitioner for conducting cross-examination of AW2 and AW3 subject to payment of cost of Rs.10,000/- to the respondent/JD.

7. Revision petition is allowed in the aforesaid terms.

(SUKHVINDER KAUR)
JUDGE

29.01.2024
harjeet

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |