

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

128

CR-467-2024 (O&M)
Date of Decision: 06.02.2024

Om Parkash

...Petitioner

Versus

Santosh

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present:- Mr. Manoj Kaushik, Advocate,
for the petitioner.

VIKAS SURI, J.

1. The petitioner by way of the present revision petition filed under Article 227 of the Constitution of India has approached this Court for setting aside order dated 08.01.2024 (Annexure P-5) passed by the learned Civil Judge (Senior Division), Jhajjar, whereby the application seeking additional opportunity to cross-examine the plaintiff's witnesses by recalling them, has been dismissed.
2. It is pleaded that the suit for possession by way of specific performance has been instituted against the defendant-petitioner. The plaintiff-respondent led his evidence and an opportunity was given to the defendant-petitioner to cross-examine the witnesses but despite the same, counsel for the defendant-petitioner did not cross-examine the plaintiff's witnesses and as such, same was treated as 'Nil'. Thereafter, defendant-petitioner did not produce his evidence and moved an application seeking

permission to cross-examine the plaintiff's witnesses.

3. Succinctly, it has been submitted on behalf of the defendant-petitioner that the plaintiff has examined four witnesses in the suit but the petitioner's previous counsel had not cross-examined the said witnesses. Now, the defendant-petitioner has changed his counsel and wants to cross-examine the witnesses already examined by the plaintiff. Upon notice, the said application was opposed by the plaintiff-respondent. It was contended that sufficient opportunities have been provided to the defendant-petitioner to cross-examine the said witnesses but despite the same, the said opportunities were not availed and as such, cross-examination was treated as 'Nil'. It is further submitted that even thereafter, many effective opportunities were provided to the defendant-petitioner to produce his evidence but the same have also not been availed of. It is in the backdrop of the aforesaid respective contentions, learned trial Court came to the conclusion that the omission to cross-examine the plaintiff's witnesses was not only within the knowledge of the defendant-petitioner but was also done with his consent.

4. Heard learned counsel for the petitioner and perused the material available on record with his able assistance.

5. It is undisputed that opportunity to cross-examine the plaintiff's witnesses was given to the defendant but the same was not availed of and resultantly, cross-examination was treated as 'Nil' as such. It is also not disputed that defendant's evidence has not been adduced so far as noticed in

the order dated 08.01.2024. The only submission advanced by learned counsel for the petitioner is that the previous counsel of the defendant-petitioner did not cross-examine the plaintiff's witnesses and after change of his counsel, he wants to cross-examine the said witnesses. I have considered this submission made by learned counsel for the petitioner but do not find myself in agreement with the same.

6. Learned counsel for the petitioner has not been able to cite any judicial precedent to buttress his arguments that change of counsel would be a good and just ground for recall of the witnesses already examined and for grant of another opportunity to cross-examine them. On the contrary, a plea of such nature cannot be permitted to be allowed, otherwise such a plea would only perpetuate mischief at the hands of the defaulting party.

7. In view of the above, this Court does not find any illegality or infirmity in the order dated 08.01.2024 (Annexure P-5) passed by the learned Civil Judge (Senior Division), Jhajjar. Resultantly, the instant petition being bereft of any merit stands dismissed.

8. Pending application(s), if any, stands disposed of.

February 06, 2024

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**(VIKAS SURI)
JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No