

2024:PHHC:056842

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CR-1787-2023(O&M)
Date of decision :24.04.2024

Deepak Sharma **...Petitioner**

Vs.

Rajni Sharma and another	...Respondents
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CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sourabh Singla, Advocate
for the petitioner.

Respondent No.1 proceeded against *ex parte* vide order dated 24.05.2023.

ANIL KSHETARPAL, J. (Oral)

1. The plaintiff's suit for possession by way of specific performance of the agreement to sell filed against Sh. Kuldeep Kumar and Sh. Deepak Sharma is pending. Sh. Deepak Sharma has been impleaded as defendant No.2. It is claimed by Sh. Deepak Sharma that he has engaged Sh. J.D. Bansal, Advocate to protect his interest. Sh. Deepak Sharma has purchased the suit property from Sh. Kuldeep Kumar by virtue of the sale deed dated 26.07.2016.

2. It is the grievance of the petitioner that he would not be granted opportunity to cross-examine two witnesses examined by the plaintiff. He submits that an error has occurred on the ground that the presence of Sh. M.P.S Thind, Advocate has been marked in every interlocutory order, though, he has never engaged Sh. M.P.S Thind, Advocate. He submits that an application to this effect was filed before the trial Court, however, the same has been

dismissed without holding any reason.

3. This Court has considered submission.
4. It is evident that an application for permission to cross-examine PW1 and PW2 was filed by the petitioner while asserting that he has never engaged Sh. M.P.S Thind, Advocate. After noticing the aforesaid fact, the trial Court has not recorded that the petitioner did not engage Sh. M.P.S Thind, Advocate. However, the trial Court has dismissed the application on the ground that it is the duty of the defendant and her counsel to cross-examine the witnesses present in the Court. This was not appropriate on the part of the trial Court to overlook a procedural irregularity, which has resulted in depriving the opportunity to the petitioner to cross-examine the witnesses.
5. The revision petition is allowed. Hence, the impugned orders dated 07.02.2023, 09.02.2023 and 03.03.2023 are set aside. The trial Court is directed to permit the petitioner to cross-examine PW1 and PW2.

24.04.2024

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Whether speaking/reasoned :
Whether Reportable :

(ANIL KSHETARPAL)
JUDGE

Yes	No
Yes	No