



CR-3237-2024 (O&M) -1-

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CR-3237-2024 (O&M)
Date of decision:27.05.2024

Kinder Singh

... Petitioner

Vs.

Sher Singh & another

... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Priyanshu Kamra, Advocate for the petitioner.

...

SUKHVINDER KAUR, J.

1. The instant revision petition has been filed by the petitioner/defendant No.2 for setting aside the order dated 01.04.2024 (Annexure P-5) passed by the Civil Judge, Junior Division, Abohar, vide which application dated 09.02.2024 filed by defendant No.2 for recalling the plaintiff for his cross-examination has been dismissed.

2. Brief facts required for adjudication of the present revision petition are that the plaintiff/respondent No.1 filed a suit for permanent injunction restraining the defendants from interfering into the peaceful possession of the plaintiff over land measuring 14 kanal 10 marlas comprising in rectangle No.259, 2/1 (1-2), 22 (8-0), 23/2/1 (0-7), and rectangle No.273, killa No.8/2 min (0-1), 8/2 min (5-0), khewat No.116/113 and 118/115 and khatoni No.150 and 152 situated within the revenue estates of Dhban Kokrian, Hadbast No.63 as per jamabandi for the year 2011-12



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and further for restraining the defendants from interfering in the peaceful using of water lift pump as well khal and passage leading towards the fields of plaintiff jointly being used by the parties on the basis of oral as well as documentary evidence of all kinds.

3. Upon notice, the petitioner/defendant No.1 filed written statement on 08.08.2022. Along with the written statement, a counter-claim was also filed and the matter was kept pending for filing of reply to such counter-claim. On 10.01.2024, plaintiff/respondent No.1 himself appeared in the said civil suit as PW1. His cross-examination was to be conducted on 24.01.2024, but counsel for the petitioner/defendant No.1 was in some other Court and trial Court passed order dated 24.01.2024 wherein the cross-examination was treated as nil. Against the said order, petitioner moved an application for recalling of the said witness for cross-examination. Thereafter, the said application was also dismissed by the trial Court vide the impugned order dated 01.04.2024. Hence, aggrieved against the same, the revision petitioner/defendant No.1 has knocked the doors of this Court by filing of the present revision petition.

4. Learned counsel for the petitioner has contended that the plaintiff himself has appeared as PW1 and it is very important for the just decision of the case that his cross-examination may be conducted, so that the best evidence comes on record for the trial Court to adjudicate the matter when it is also a case of counter-claim. He has further contended that the balance of convenience lies in favour of the petitioner and if the said application is accepted, no prejudice would be caused to respondent No.1



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whereas the petitioner would not be able to defend his case properly in case the plaintiff is not cross-examined. To strengthen his case, he has placed reliance upon a decision of the Hon'ble Supreme Court of India in **Civil Appeal No.1684 of 2016 (arising out of SLP (C) No.22141 of 2013) Ram Rati Vs. Mange Ram (D) through L.Rs. & others**. He has submitted that one opportunity may be provided to the petitioner for cross-examination of the plaintiff/respondent No.1, who has himself appeared as PW1.

5. I have heard learned counsel for the petitioner at length and have perused the pleadings on record.

6. Perusal of the impugned order reveals that the trial Court while declining the application of the petitioner has observed that once an order is passed it becomes '*functus officio*' and the Court has no jurisdiction as well as power to review its own orders and accordingly, the order treating cross-examination by defendant as nil cannot be reviewed by the Court.

7. 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 for conducting cross-examination of the plaintiff/respondent No.1. The delay on the part of the petitioner in conducting the cross-examination of the plaintiff can be compensated by way of imposing costs.

8. Keeping the above aspects in view, the impugned order is set aside, subject to payment of cost of Rs.8,000/- to the respondent. The trial Court will grant one effective opportunity to the petitioner for conducting cross-examination of the plaintiff, subject to payment of cost of Rs.8,000/-



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to the respondent.

- 9. Revision petition is allowed in the aforesaid terms.
- 10. Pending application(s), if any, shall also stand disposed of.

**(SUKHVINDER KAUR)
JUDGE**

27.05.2024
harjeet

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