



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

124

CR-3739-2024 (O&M)
Date of decision: 08.07.2024

Ram Avtar Singhal

...Petitioner

Versus

Poonam Garg and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Jamshed Ahmed, Advocate for the petitioner.

VIKAS SURI, J.

1. Prayer in this revision petition under Article 227 of the Constitution of India is for setting aside order dated 23.05.2024 (Annexure P-5) passed by learned Addl. Civil Judge (Senior Division), Ferozepur Jhirka, District Nuh (Mewat), whereby the application for recalling PW-1-Smt. Poonam Garg for her cross-examination by the defendant No.3-petitioner, has been dismissed.

2. Brief facts of the case are that the respondent No.1 filed a suit for declaration and permanent injunction against respondent Nos.2 and 3 herein. The plaintiff-respondent No.1 is alleged to have entered into a partnership dated 27.10.2010 with the petitioner and accordingly, the petitioner moved an application under Order 1 Rule 10 CPC before the trial Court for being impleading as a party defendant to the suit. Upon notice, the said application was opposed by the plaintiff by filing



reply. Vide order dated 30.08.2022, the application filed by the petitioner was allowed and he was arrayed as defendant No.3 in the present suit. It is pleaded that the petitioner is in fact the contesting defendant. The petitioner filed his written statement to the suit and replication thereto has also been filed by the plaintiff. From the pleadings of the plaintiff and the petitioner as defendant No.3, an additional issue No.5A was framed vide order dated 12.09.2023 and the matter was adjourned to 21.10.2023 for plaintiff's evidence. For the next five hearings thereafter, respondent No.1-plaintiff did not lead any evidence. On 20.04.2024, the plaintiff appeared as her own witness as PW-1 and got recorded her examination-in-chief. On the request of counsel for the defendants, her cross-examination was deferred to 16.05.2024. PW-1 – Smt. Poonam Garg (plaintiff) was cross-examined by counsel for defendant Nos.1 and 2 on 16.05.2024 and the cross-examination by defendant No.3, was recorded as 'nil opportunity given' and the case was adjourned to 23.05.2024 while fixing the schedule for producing evidence. On the very next hearing, the petitioner moved an application for recalling of PW-1 – Smt. Poonam Garg for her cross-examination by defendant No.3. It has been averred in the application that counsel for defendant No.3 could not cross examine the witness PW-1 as he had suffered a heat stroke and had to leave the Court premises immediately. The said application was supported by affidavit of the counsel. It was further averred that non-appearance of the counsel for petitioner-defendant No.3 at the time of cross-examination of PW-1



was not intentional but due to the medical reason beyond his control as stated in the application. Upon notice of the said application, no reply was filed thereto and counsel for the plaintiff-respondent No.1 sought to oppose the same without filing any specific reply. The said application was dismissed vide order dated 23.05.2024 (Annexure P-5).

3. Aggrieved by the aforesaid order dismissing the application for recalling PW-1 – Smt. Poonam Garg for her cross-examination by defendant No.3, the petitioner has invoked jurisdiction of this Court by way of the instant revision petition.

4. Heard learned counsel for the petitioner and with his able assistance, perused the record.

5. A perusal of the impugned order dated 23.05.2024 would show that the same is in two parts whereby two applications have been disposed of. Learned counsel for the petitioner submits that challenge to the impugned order is limited to the extent of dismissal of the application seeking recalling of PW-1 for her cross-examination by defendant No.3.

6. Undisputedly, after the petitioner was impleaded as a party defendant to the suit and completion of pleadings in that regard, an additional issue was framed on 12.09.2023. The plaintiff availed of five opportunities before stepping into the witness box as her own witness. Her examination-in-chief was recorded on 20.04.2024 and her cross-examination was deferred on the request of counsel for the defendants. On the adjourned hearing, PW-1 was cross-examined by counsel for



defendant Nos.1 and 2 but could not be cross-examined by counsel for defendant No.3. On the very next date of hearing, an application has been moved explaining the reason for the absence of counsel for defendant No.3 at the time of cross-examination of PW-1, which application is supported by affidavit of the counsel. Admittedly, the averments made in the application, supported by affidavit, have not been controverted by filing reply. It has only been observed in the impugned order that no intimation or any application was filed on behalf of defendant No.3, if his counsel had to leave the Court on account of medical emergency. Even request in that regard was not made through proxy counsel and accordingly, it was held that recalling of the aforesaid witness for cross-examination is not justified.

7. Learned counsel for the petitioner has emphatically argued that the petitioner should not be made to suffer on account of the ill health of his counsel. It is further contended that the counsel has filed his own affidavit in support of the application wherein the ground of his having suffered a heat stroke has been detailed and the said fact has not been controverted by filing any counter affidavit thereto or even by a written reply. It is submitted that the plaintiff closed her evidence in affirmative on 16.05.2024 and thereafter, only two hearings have taken place and till date, no evidence on behalf of defendants has been led, as such, no prejudice would be caused to plaintiff-respondent No.1 in case her cross-examination by defendant No.3 is recorded at this stage. Learned counsel for the petitioner seeks just one effective opportunity to



cross examine PW-1 and submits that the witness could be compensated for the inconvenience caused.

8. I have considered the submissions noticed hereinabove and keeping in view the facts and circumstances of the present case, this Court is of the view that to secure the ends of justice, one opportunity deserves to be afforded to petitioner-defendant No.3 to cross-examine the plaintiff who has been examined as PW-1.

9. Accordingly, the impugned order dated 23.05.2024 is modified to the above extent. The trial Court is requested to grant one effective opportunity to the petitioner/ DW-3 to cross-examine PW-1 – Smt. Poonam Garg on the date already fixed before the trial Court or any other date convenient to it, however, subject to payment of costs of Rs.10,000/- to be paid to the plaintiff.

10. This order has been passed without issuing notice to the respondents and as such, they would be at liberty to file an application seeking its recall.

11. The revision petition is disposed of in the aforesaid terms.

July 08, 2024
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(VIKAS SURI)
JUDGE

Whether speaking/reasoned : Yes / No

Whether Reportable : Yes / No