

2024:PHHC:126708



213 (U) **IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR-5559-2024**Decided on:-23.09.2024**

Amin @ Ameen (since deceased) thr. his LRs.

....Petitioner..

vs.

Haroon

...Respondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Rakesh Dhiman, Advocate for the petitioner.

HARKESH MANUJA J. (Oral)

1. By way of present petition, challenge has been laid to an order dated 09.08.2024 passed by the Court of Civil Judge (Junior Division) at Nuh, whereby, the right of the petitioner-defendant to cross-examine the plaintiff witnesses, was foreclosed.

2. Briefly stating, based on an agreement to sell dated 15.07.2014, respondent-plaintiff filed a suit for possession by way of specific performance against the petitioner-defendant on 06.10.2017, wherein, issues were framed on 12.05.2023 and thereafter, the matter was posted for recording of evidence of the respondent-plaintiff. PW-1, PW-2 and PW-3 tendered their affidavits on 14.07.2023 and 29.09.2023 respectively, and the case was adjourned for further proceedings. Cross-examination of PW1 was concluded on 29.09.2023, whereas, vide order dated 09.08.2024, the right of the petitioner-defendant to cross-examine the remaining plaintiff witnesses was foreclosed.

3. Learned counsel for the petitioner submits that the order passed by

the trial Court has caused serious prejudice to the rights of the petitioner-defendant as sufficient opportunity has not been granted to him to cross-examine the witnesses of the plaintiff.

4. I have heard learned counsel for the petitioner and gone through the paper book.

5. Although, the right of the petitioner-defendant to cross-examine the witnesses of the plaintiff has been foreclosed while recording that the witnesses were coming since long and the counsel appearing on behalf of the petitioner-defendant was seeking adjournment on one pretext or other and thus, the opportunity to cross-examine them was recorded as NIL, however, contrarily, a perusal of the record as well as zimni orders appended along with the present petition show that having tendered their affidavits, on 06 occasions, the plaintiff witnesses were not present as either of two was recorded as unwell. On one occasion, the petitioner-defendant sought adjournment on account of death in the family. Even on the date when the impugned order was passed, a request appears to have been made on behalf of the counsel appearing for the petitioner-defendant before the trial court on account of sad demise of one of his cousins.

In such circumstances, it cannot be held that the petitioner-defendant or his counsel were negligent while availing opportunities to cross-examine the plaintiff witnesses. Moreover, passing of the impugned order is going to cause serious prejudice to the rights of the petitioner-defendant as he would not be able to put-forth his defence in the absence of cross-examination of remaining plaintiff witnesses.

6. Accordingly, in view of the aforesaid discussion, the present petition is allowed and the impugned order dated 09.08.2024 passed by the trial Court, is hereby set aside, thereby granting one effective opportunity to the

petitioner so as to cross-examine the plaintiff witnesses on the date to be fixed by the trial Court upon ensuring the presence of the plaintiff witnesses.

7. The aforesaid order shall be subject to payment of costs of Rs.5,000/-, to be deposited by the petitioner with the trial Court on the date fixed and the same shall be disbursed in favour of respondent-plaintiff.

8. The present petition is being disposed of without issuing notice to the respondent, as the same would further delay the disposal of the suit, besides burdening him with unnecessary costs of litigation.

23.09.2024

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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/ No