



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

121

CR-5329-2024

Date of Decision: 16.09.2024

Gurpreet Singh Bhalla

...Petitioner

Versus

Pritam Singh Bhalla

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present:- Mr. Aditya Dassaur, Advocate, with
Mr. Prithvi Lohtiya, Advocate, for the petitioner.

VIKAS SURI, J.

1. Challenge in the present petition under Article 227 of the Constitution of India is to order dated 02.08.2024 passed by the Civil Judge (Junior Division), Jalandhar, whereby cross-examination of PW-1 Pritam Singh has been treated as 'Nil'.

2. Brief facts of the case are that the plaintiff-respondent filed a suit for mandatory injunction directing the defendant to vacate and deliver physical vacant possession of the suit property and for *mesne profits* @ Rs.15,000/- per month for illegal and unauthorised use and occupation, from 22.02.2010 till vacation of the premises. The parties are closely related. The plaintiff/respondent is the father of petitioner/defendant.

2.2 Upon notice of the suit, petitioner caused appearance and filed his written statement, wherein it was pleaded that respondent has become inimical towards the petitioner owing to some family dispute between the parties and the petitioner's other brother. Considering the pleadings of the



parties, issues were framed vide order dated 22.02.2023 (Annexure P-3) and proceedings were deferred for plaintiff's evidence to 21.04.2023. The examination-in-chief of the plaintiff as PW-1 was recorded on 21.07.2023 and cross-examination was deferred on the request of counsel for the defendant. On the next two hearings, learned Presiding Officer was on leave and as such, the proceedings were deferred to 19.12.2023. On the said hearing and the one thereafter, PW-1 Pritam Singh did not come present for his cross-examination and as such, the proceedings were deferred to 16.04.2024, on which date learned Presiding Officer was on maternity leave and no PW came present before the learned entrustee Court and the proceedings were further adjourned to 01.07.2024. The plaintiff came present on the said hearing but his cross-examination could not be conducted and the proceedings were further adjourned to 02.08.2024. The cross-examination of PW-1 Pritam Singh was treated as 'Nil' vide impugned order dated 02.08.2024 (Annexure P-5). Aggrieved by the said order, petitioner has assailed the same through the present petition.

3. Learned counsel for the petitioner submits that perusal of the *zimni* orders would show that only one effective opportunity has been granted to the petitioner to cross-examine PW-1 Pritam Singh, before the same was treated as 'Nil'. He prays for one effective opportunity to cross-examine PW-1 Pritam Singh. It is further submitted that the next date of hearing before the trial Court is 19.09.2024 for defendant's evidence.

4. Reliance is placed upon ***Madhu Saini and another vs. Raj Rani***



***and another*, 2023(2) RCR (Rent) 421, *Mohinder Singh vs. Satnam Singh*, 2017(3) RCR (Civil) 569, *Balkar Singh vs. Nirmal Singh*, 2017(1) PLR 684, *Ved Parkash and another vs. Singara Singh and others*, 2017(1) Law Herald 538 and *Kiran Bala vs. Surinder Sharma*, 2017(3) RCR (Civil) 310.**

5. I have heard learned counsel for the petitioner and with his able assistance perused the record.

6. It is well settled that the right to lead evidence is pivotal to a fair trial and partakes the character of natural justice and fair play. No doubt, where a party is unacceptably apathetic, the Court may put its foot down and close the right of the party to lead evidence; else, as adversarial litigations are meant to be tried after allowing the parties an adequate opportunity to place their respective stands on record. The Court should not be hyper-technical, in the matter of granting opportunity to lead evidence and the like.

7. Undisputedly, the petitioner was afforded two opportunities to cross-examine PW-1 Pritam Singh. It is well settled law that exercise of judicial discretion is to attain the aims of justice. Procedural law is enacted with the objective of doing substantial justice between the parties. It is not disputed that the petitioner-defendant was granted opportunity to cross-examine PW-1 but could not do so. The order treating cross-examination of a party as 'Nil' has far reaching consequences and the Courts should normally pass an order of lesser gravity at the first instance, like that of imposition of costs. Admittedly, there is nothing on record to show as to



whether any costs were imposed while affording an opportunity to the petitioner-defendant to cross-examine the witness.

8. In the present case, cross-examination of PW-1 Pritam Singh is necessary to decide the real controversy between the parties and for a fair trial, further opportunity ought to have been granted to the petitioner to cross-examine the said witness subject to payment of costs. By not granting reasonable opportunity to cross-examine the material witness, serious prejudice would be caused to the case and the same would result in miscarriage of justice.

9. Keeping in view the serious consequences likely to enure on account of not granting the opportunity to cross-examine the material witness, in ***Balkar Singh's*** case (supra), this Court had granted one opportunity to cross-examine the witnesses subject to payment of costs to each witness. Similar view was taken by other coordinate Benches in ***Ved Parkash's*** case (supra) and ***Kiran Bala's*** case (supra).

10. In the light of the above, I am of the considered view that it would be in the interest of justice to allow one more opportunity to the petitioner to cross-examine PW-1 Pritam Singh, subject to payment of costs. The same would also benefit the Court in discharging its duty, as veracity of the deposition would get tested as such. Accordingly, the instant petition is allowed and the impugned order dated 02.08.2024 (Annexure P-5) is set aside to the extent that cross-examination of PW-1 Pritam Singh is considered as 'Nil' and allow the petitioner one effective opportunity to



cross-examine the said witness subject to payment of costs of Rs.10,000/-, to be paid to the witness. It is made clear that failing to cross-examine PW-1 Pritam Singh on the date already fixed, if he is present and available for his cross-examination, or any other date convenient to the Court, or failing to pay costs in terms of this order, the petitioner would not be entitled to any further opportunity for the said purpose and the trial Court would proceed with the matter without this order having any bearing on the trial.

11. However, as noticed above, the respondent/plaintiff has closed his evidence in affirmative and to balance equity between the parties, the respondent/plaintiff is also granted liberty to lead further evidence in affirmative, if so advised and for the said purpose, two effective opportunities be afforded to him.

12. As the present revision petition is being disposed in the absence of respondent, liberty is granted to him to seek recalling of the present order, if valid grounds for the same are made out.

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

September 16, 2024
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(VIKAS SURI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No