



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

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CR-5725-2024 (O&M)**Date of Decision: 30.09.2024****Kulwinder Singh**

....Petitioner

Versus

Punjab State Power Corporation Limited and another

....Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Anosh Samson, Advocate
for the petitioner.

VIKAS SURI, J. (Oral)

1. The plaintiff-petitioner through this petition under Article 227 of the Constitution of India assails order dated 03.09.2024 (Annexure P-6) passed by learned Civil Judge (Junior Division), Batala, whereby the right of petitioner to examine the witness DW-1 Er. Balwinder Singh was treated as 'Nil' and further order dated 09.09.2024 (Annexure P-8), whereby the application under Section 151 CPC for opportunity to the plaintiff's counsel for conducting cross-examination of defendant witness, was dismissed.

2. Brief facts of the case are, that the plaintiff-petitioner filed a suit for declaration challenging the demand issued by Punjab State Power Corporation Limited for a sum of Rs.64,448/- vide memo No.674 dated 08.03.2019 on account of electricity connection installed in the premises of the plaintiff at Village Kotla Suba Singh, Tehsil Batala, District Gurdaspur,

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with consequential relief of permanent injunction. Mandatory injunction was also sought directing the defendants to install new electricity connection in the name of plaintiff in his premises.

3. From the pleadings of parties, the issues were framed vide order dated 03.11.2023. The plaintiff led his evidence and closed the same vide order dated 06.05.2024. On the following hearing, the defendant examined DW-1 Er. Balwinder Singh and his cross-examination was deferred on the request of counsel for the plaintiff. On the following date, the aforesaid defendant witness was present for his cross-examination in the morning but a request for adjournment was made. The matter was deferred to post-lunch session, wherein the aforesaid request was reiterated. The trial Court after observing that the defendant witness had been present in the Court since 10:30 A.M. for his cross-examination and despite informing the regular counsel for the plaintiff-petitioner, he did not turn up to cross-examine the witness and thus, his cross-examination was treated as 'Nil'. On the same day, learned counsel for the plaintiff appeared before the Court and moved an application under Section 151 CPC for recalling DW-1 Er. Balwinder Singh for his cross-examination. Notice of the said application was issued for the date already fixed i.e. 07.09.2024. The defendant-respondents opposed the said application by filing reply. The said application was dismissed vide order dated 09.09.2024.

4. Aggrieved by the aforesaid orders, the petitioner has assailed the same by way of present petition.

5. Learned counsel for the petitioner submits that perusal of the

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zimni orders would show that only one effective opportunity has been granted to the petitioner to cross-examine DW-1 Er. Balwinder Singh, before the same was treated as 'Nil'. He prays for one opportunity to cross-examine the aforesaid defendant witness. It is further submitted that the trial is now pending for 01.10.2024 for defendant's evidence. At this stage, on advance notice, Mr. Jasraj Singh, Advocate puts in appearance for the respondents and has opposed the present petition.

6. I have heard learned counsel for the parties and perused the paperbook with their able assistance.

7. 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.

8. Perusal of the record shows that the petitioner was afforded two opportunities to cross-examine DW-1 Er. Balwinder Singh before the cross-examination was treated as 'Nil'. It is trite 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 could not cross-examine DW-1 Er. Balwinder Singh despite opportunity having been granted for the said purpose. The order treating cross-examination of a party as 'Nil' has far reaching consequences and the



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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 plaintiff-petitioner to cross-examine the witness.

9. In the case in hand, DW-1 Er. Balwinder Singh is a sole witness examined so far and his cross-examination would be 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.

10. In ***Balkar Singh vs. Nirmal Singh***, 2017(1) PLR 684, this Court had granted one opportunity to cross-examine the witnesses subject to payment of costs to each witness. Similar view was taken in CR-5329-2024 titled as ***Gurpreet Singh Bhalla vs. Pritam Singh Bhalla***, 2024:PHHC:122092, ***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. There can be no doubt that serious consequences are likely to ensue on account of not granting the opportunity to cross-examine the material witness. The veracity of deposition gets tested on cross-examination and the same would also benefit the Court in discharging its duty.

11. In light of the above, this Court is of the considered view that it would be in the interest of justice to allow one more opportunity to plaintiff-petitioner to cross-examine DW-1 Er. Balwinder Singh, subject to payment of

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costs. Accordingly, the present revision petition is allowed and the impugned orders dated 03.09.2024 (Annexure P-6) and dated 09.09.2024 (Annexure P-8) are set aside to the extent that cross-examination of DW-1 Er. Balwinder Singh is treated as 'Nil' and allow the petitioner one effective opportunity to cross-examine the said witness, subject to payment of costs of Rs.5,000/- to be paid to the respondent-corporation. The trial Court would accordingly fix a date for cross-examination of DW-1 Er. Balwinder Singh. It is made clear that failing to cross-examine DW-1 Er. Balwinder Singh 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.

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

September 30, 2024*Varinder***(VIKAS SURJ)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No