

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

Sr. No.142

**CR-6443-2023 (O&M)
Date of Decision: 31.01.2024**

BIKRAMJIT SINGH @ BIKRAMJEET SINGH AND ANOTHER

....Petitioners

Versus

RAJWANT KAUR AND ANOTHER

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Mr. Swarn Tiwana, Advocate,
for the petitioners.

ARCHANA PURI, J. (Oral)**CM-20850-CII-2023**

The present application has been filed for placing on record the zimini orders, the detail whereof has been given in the headnote of the application.

In view of the averments made in the application, same is allowed and the requisite zimini orders are taken on record, as Annexures A-1 to A-13.

Main case

Challenge in the present revision is to the order dated 09.10.2023 (Annexure P-7) passed by learned Lower Court, whereby the evidence of the petitioners (who are plaintiffs before learned Lower Court), has been closed by order.

Learned counsel for the petitioner heard.

Facts, as culled out from the paperbook are that the petitioners

had filed a suit, thereby seeking specific performance of an agreement to sell

dated 13.03.2019. In pursuance of the notice having issued, the respondents had made appearance and had filed their written statement. The issues in the case were framed on 03.09.2022 and the case was adjourned for 24.11.2022. Perusal of the zimini orders, which have been taken on record today vide CM-20850-CII-2023, reveals about no diet money having been deposited and several opportunities had been availed by the petitioners to lead evidence. PW-1, Bikramjit Singh, was partly cross-examined on 14.07.2023 and the case was adjourned to 21.07.2023 for further cross-examination of the said witness. On 21.07.2023, again the witness had not come and on request of learned counsel appearing on behalf of the plaintiffs, the case was adjourned for the same purpose, for 04.08.2023 and thereafter, the aforesaid witness has not yet been cross-examined. Thereafter, the said witness had never made appearance, for the purpose of cross-examination.

Perusal of the zimini order dated 04.08.2023 reveals about PW-2, Gurmukh Singh, to be present and he was examined-in-chief and on request of counsel for the defendant(s), the case was adjourned for 18.08.2023, for his cross-examination and remaining plaintiff evidence. The said Gurmukh Singh was bound down for the next date of hearing, for the purpose of cross-examination. However, on 18.08.2023, in view of the request made by learned counsel for the defendants, one day earlier, the witness had not appeared for cross-examination and the case was adjourned further for 01.09.2023, when the residue cross-examination of PW-2, Gurmukh Singh, was completed. Thereafter, no other witness was examined and ultimately, vide the impugned order, the evidence of the plaintiffs was closed by order.

Considering the seriatim of facts, as evident from the perusal of the zimini orders, definitely the petitioners have failed to conclude their

evidence, despite availing several opportunities, but however, learned counsel for the petitioners, now submits that only one opportunity is required for conducting of cross-examination of PW-1, Bikramjit Singh and also to examine one other witness. Learned counsel undertakes to produce the witnesses, at his own responsibility and they are not required to be summoned through the Court.

Keeping in view the submission, so made and also considering the fact that the controversy between the parties should be decided on merits, without prejudice to the rights of the parties to be adjudicated, the revision petition in hand is allowed and the impugned order dated 09.10.2023 is hereby set aside, subject to deposit of Rs.20,000/- as costs in '*Poor Patients Fund, PGIMER, Chandigarh*', within a period of ten days from today onwards. PW-1, Bikramjit Singh, who is plaintiff shall make appearance before learned Lower Court on the date already fixed i.e. 07.02.2024. On appearance of the said witness, the Court concerned, if convenient to the other side, examine the said witness, as well as one other witness, on that day, or within a period of 10 days thereafter. However, only one opportunity shall be granted to the petitioners to produce PW-1, as well as one other witness, to be examined before the Court.

In view of the aforesaid terms, the instant revision petition stands disposed of.

31.01.2024

Himanshu

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes/No