

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

305

CR-73-2024 (O&M)
Date of decision: 12.02.2024

Sham Lal Pabbi (since deceased) through his legal representative

...Petitioner

Versus

Jatinder Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Aayush Gupta, Advocate for the petitioner.

Mr. S.S. Salar, Advocate for respondent No.1.

VIKAS SURI, J.

1. The present revision petition has been preferred under Article 227 of the Constitution of India by the plaintiff-petitioner aggrieved by order dated 15.09.2023, passed by learned Civil Judge (Junior Division) Ludhiana, whereby the cross-examination of one of the witnesses has been treated as NIL; and order dated 17.10.2023 whereby the application seeking recalling of the said witness was dismissed.

2. On 10.01.2024, the following order was passed:-

“Challenge in the present petition is to the order dated 15.09.2023 whereby the cross-examination of one of the witnesses has been treated as nil, and to the order dated 17.10.2023 whereby the application seeking recalling of the said witness has been dismissed.

Learned counsel for the petitioner has *inter alia* submitted that the witness namely Jatinder was partly

cross-examined on 31.08.2023 and the proceedings were thereafter adjourned to 13.09.2023. It is further submitted that on account of amendment of pleadings, an additional issue was framed and the said witness filed a revised affidavit as his examination-in-chief. The same has taken place after the said witness had been partly cross-examined on the earlier affidavit. An application was filed on 13.09.2023 seeking clarification whether said cross-examination was to be taken into account or not, which was considered and declined on the same day i.e. 13.09.2023. However, copy of the said order was uploaded on the official web portal only on 15.09.2023, on which date the impugned order was passed. Learned counsel for the petitioner seeks only one opportunity to cross-examine the said witness and is ready to compensate the witness in terms of costs.

Notice of motion to respondent No.1 only for final disposal, returnable for 08.02.2024.

Liberty is granted to additionally serve the aforesaid respondent through the counsel representing him before the trial Court.

To be taken up after the cases in the urgent list.

Notice re: stay.

Process *dasti* only.”

3. Upon notice, Mr. S.S. Salar, Advocate had put in appearance on behalf of respondent No.1 and sought time to complete instructions and address arguments.

4. Today, on resumed hearing, Mr. S.S. Salar, Advocate has filed his power of attorney, which is taken on record. At the very outset, on instructions from respondent No.1, he states that without entering into any controversy with regard to the legality or propriety of the impugned

order, as the same is likely to result in further delay of the proceedings, the present petition be accepted and the petitioner-defendant be granted one opportunity subject to heavy costs, to cross examine the plaintiff's witness - Jatinder Singh.

5. Learned counsel for respondent No.1, however, submits that the witness in question is 82 years old senior citizen. On 18.04.2023, the said witness had tendered into evidence his duly sworn affidavit along with documents Ex.P1 to P12 and his cross-examination was deferred. Thereafter, though the said witness continued to present himself for cross-examination over numerous hearings, but he was partly cross-examined only on one occasion on 31.08.2023. Vide order dated 13.09.2023, last opportunity was granted for cross examining the said witness by specifying that no further opportunity would be granted as the case falls in Action Plan Cases being instituted in the year 2013. The said witness as well as counsel for the defendants, were directed to be present in Court at 11.00 AM on 15.09.2023, for cross-examination. On the adjourned date, counsel for the petitioner-defendant requested for yet another adjournment on the ground that he had to peruse the order passed on 13.09.2023 and thereafter, he would cross examine the witness. Noticing the conduct of the defendants and their counsel, the impugned order was passed treating the cross-examination of the aforesaid to be NIL.

6. Learned counsel for the petitioner submits that on an opportunity being granted as aforesaid, he undertakes to conclude the cross-examination of PW-Jatinder Singh on the next date itself. It is

further submitted that the next date of hearing before the trial Court is tomorrow i.e. 13.02.2024.

7. Heard learned counsel for the parties and perused the material available on record.

8. In view of the consensus arrived at between the parties, the present petition is allowed. Resultantly, the impugned order is set aside subject to payment of Rs.15,000/- as costs payable to the witness namely Jatinder Singh, which would be a condition precedent. It is, however, made clear that in case the cross-examination upon said witness is not conducted on 13.02.2024, the trial Court may fix any other date convenient to it for the said purpose.

9. The parties are directed to appear before the trial Court on 13.02.2024 at 11.00 AM. It is further ordered that in case the petitioner fails to abide by this order, the present revision petition would be deemed to have been dismissed with costs, as quantified above.

10. Petition is disposed of in the aforesaid terms.

February 12, 2024

sumit.k

(VIKAS SURI)
JUDGE

Whether speaking/reasoned : Yes / No

Whether Reportable : Yes / No