

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

114

CR-7869-2023(O&M)
Decided on: 05.01.2024

Roshan Lal

...Petitioner

Versus

Ram Bai and others

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Saurabh Bajaj, Advocate
for the petitioner.

Mr. Ravish Bansal, Advocate
for the respondents.

RITU TAGORE, J.

1. Mr. Ravish Bansal, Advocate filed power of attorney on behalf of all the respondents, same is taken on record, subject to just exceptions.
2. Service is complete.
3. The challenge in the present revision pertains to order dated 14.08.2023 (Annexure P-1) wherein petitioner's (defendant before learned lower Court) right to cross-examine the witness Mohan Lal (PW-4) was forfeited by treating it as Nil and further order dated 03.11.2023 (Annexure P-2) rejecting the application to recall the order dated 14.08.2023.
4. Learned counsel for the petitioner argues that impugned orders are unsustainable in the eyes of law as they go against the principles of natural justice. The Court should not deny a party to litigation, the basic right to cross-examine a witness. Learned counsel further submits that no prejudice should be caused to the litigant due to the fault on part of his

counsel. In the present case, counsel for the petitioner could not cross-examine the witness on the due date of hearing as outlined in the application (Annexure P-13) moved by the petitioner immediately on the same day before the learned lower Court.

5. Learned counsel for the petitioner submits that the cross-examination of PW-4 is very crucial, as he is son of Ramji Lal, whose membership is under challenge in a separate suit filed by him much prior to the present suit. Furthermore, PW-4 is a co-plaintiff (plaintiff No.2) in the present suit. In these circumstances, the cross-examination of PW-4 is very important and material. Learned counsel further submits that basic principal of law is that the parties to the *lis* should conclude the suit by presenting their respective evidence before the trial Court, ensuring equal opportunities for all parties to substantiate their version. Learned counsel submits that petitioner be given one last opportunity to cross-examine the witness PW-4 and petitioner is willing to pay the costs as determined by this Court to compensate the respondents (plaintiffs before the lower Court). Learned counsel submits that the impugned orders be set aside.

6. Contrary, learned counsel for the respondent-plaintiffs submits that careful examination of impugned orders exposes the petitioner's non-compliance to the directions of the Court. Despite having ample opportunities and sufficient time, he failed to cross examine the witness (PW-4). The learned counsel contends that due to petitioner's non-adherence to the directions of the Court and failure to pay costs, the right to cross-examine PW-4 was rightly closed, treating it as Nil. Likewise, order dated 03.11.2023 (Annexure P-2) rejecting the petitioners application to recall the order dated 14.08.2023 has been justly passed, finding no merit in the

application. Learned counsel emphasizes that the orders are free from illegality and present revision petition lacks merits, warranting its dismissal.

7. I have pondered over the rival submissions of the learned counsel for the parties and have gone through the impugned orders and the paper book.

8. The petitioner-defendant, despite being given four opportunities by the learned lower Court to cross-examine the plaintiff's witness Mohan Lal (PW-4), failed to do so, leading to a forfeiture of petitioner's right. Subsequently, petitioner filed a miscellaneous application dated 16.08.2023 (Annexure P-13) for recall of the order dated 14.08.2023 that too was dismissed by setting out the reasons therein.

9. As revealed from the plaint (Annexure P-3), respondents-plaintiffs filed a suit for permanent injunction restraining the petitioner-defendant from interfering in the peaceful possession of plaintiffs over the land measuring 4 kanal 5 marla as detailed in the head note of the plaint situated in revenue state of Kotkapura, District Faridkot owned by The Schedule Caste Co-operative Land Owning Society Limited, Kotkapura by alleging that Ramji Lal, father of plaintiffs No.2 and 3 and husband of plaintiff No.1 was its member and after his death, plaintiffs are its members. Further sought restraining order against the defendant (petitioner) from dispossessing them from the land illegally, forcibly or otherwise than in due course of law, stating that defendant has no right, title or interest in the suit land nor he is member of the society.

10. The petitioner-defendant filed the written statement, denying the plaintiffs-respondents averments and pleaded that name of Ramji Lal in society's record is entered fictitiously. Furthermore, they denied that deceased Ramji Lal was member of the society or cultivated the suit land.

Additionally, the petitioner-defendant disputed the claim that the plaintiffs-respondents are in cultivating possession of the land in place of Ramji Lal.

11. As evident from the copy of the plaint (Annexure P-3), Mohan Lal is a co-plaintiff. In that capacity, he is a material and important witness. Perusal of zimini orders (Annexures P-5 to P-12) reveals that on number of occasions, no witness was present on behalf of the respondents-plaintiffs. On certain occasions, Mohan Lal (PW-4) was present, but his cross-examination was deferred at the request of counsel for the petitioner-defendant. On 01.08.2023, again, the cross-examination of witness Mohan Lal (PW-4) could not take place, as requested by the counsel for the petitioner-defendant, leading to the adjournment of the case to 14.08.2023 for his cross-examination, subject to the payment of costs Rs.300/-.

12. Perusal of the impugned order dated 14.08.2023 would show that the learned lower Court took up the case four times, however, cross-examination of the witness Mohan Lal (PW-4) could not take place. Eventually, learned lower Court forfeited the right of the petitioner-defendant to cross-examine the witness by treating it as Nil. As mentioned earlier, the counsel for the petitioner-defendant immediately on 16.08.2023 moved an application for recalling the order detailing the reasons of his inability to put up appearance when the case was called, attributed to being busy in other Court and emphasized the importance of cross-examining witness Mohan Lal (PW-4) to the learned Court. Despite this, considering the petitioner's conduct, the request for a recall was declined.

13. In my considered opinion and given circumstances, learned lower Court should have taken a lenient view, especially, when the petitioner moved an application to recall the order dated 14.08.2023 immediately on the same very day, citing reasons for the inability to conduct cross-

examination on the witness Mohan Lal (PW-4). Furthermore, I am of the view that denying the petitioner-defendant the opportunity would prejudice and cause irreparable loss as the witness in question is one of the co-plaintiffs. It is settled principle of law that all the parties should be granted adequate opportunity to lead their evidence, including the right to cross-examination, as enshrined in Order 18 Rule 17 CPC.

14. Learned counsel for the petitioner-defendant has also assured that if one opportunity is given to him, he would cross-examine the witness and also conclude his evidence within three opportunities. The petitioner-defendant counsel has further committed that he would not take any adjournment to complete the cross-examination of Mohan Lal (PW-4).

15. In the circumstances, to do complete justice between the parties, I feel that one opportunity be granted to the petitioner-defendant to cross-examine Mohan Lal (PW-4) but that can only be on punitive terms. Accordingly, impugned orders stand set aside, subject to payment of Rs.7,000/- as costs payable to respondents-plaintiffs by the petitioner-defendant. He shall also pay previous costs of Rs.300/- to plaintiffs-respondents. It is made clear that petitioner-defendant will have one opportunity to cross-examine the witness Mohan Lal (PW-4) and shall not seek any adjournment in this regard and shall complete his evidence in three effective opportunities. If the petitioner-defendant fails to comply with the above directions, he will forfeit his right to cross-examine the witness.

16. Parties are directed to appear before the lower Court on the next date of hearing as fixed by the Court. Learned lower Court shall give one effective opportunity to petitioner-defendant to conduct cross-examination on Mohan Lal (PW-4) and in case the cross-examination is not concluded on that day or any request is made by the witness, his cross-examination can be

rolled over to the next date. Learned lower Court shall provide three effective opportunities to the petitioner-defendant to conclude his evidence.

- 17. Accordingly, revision is disposed of in above terms.
- 18. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

05.01.2024
Rimpal

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