



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

131

CR No.1076-2025

Date of Decision: 20.02.2025

Manisha Tayal

...Petitioner

V/s

Sanjay Kumar and another

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Aditya Jain, Advocate, for the petitioner.
(through video conference).

VIKRAM AGGARWAL, J (ORAL)

The present revision petition has been preferred under Article 227 of the Constitution of India seeking quashing of order dated 16.01.2025 (Annexure P-7) passed by the Court of learned Addl. Civil Judge (Sr. Divn.), Palwal, vide which the opportunity of the petitioner-plaintiff to cross-examine DW1 and DW2 was ordered to be treated as 'nil'.

2. The facts, as emanating from the revision petition, are that a suit for possession by way of specific performance and permanent injunction was filed by the petitioner-plaintiff on 11.11.2016. The suit was, however, dismissed-in-default on 26.10.2023 and was subsequently restored to its original number on 05.12.2024. However, vide the impugned order dated 16.01.2025 for, cross-examination of DW1 and DW2 was not conducted on account of non-appearance of learned counsel representing the petitioner-plaintiff, the opportunity to cross-examine the said witnesses was ordered to be treated as 'nil'.

3. I have heard learned counsel for the petitioner.



4. Learned counsel for the petitioner submits that the impugned order is not sustainable. He submits that the suit was filed on 11.11.2016 and after completion of the pleadings and framing of issues, the evidence of the petitioner-plaintiff concluded on 01.12.2018. He submits that the suit was dismissed-in-default vide order dated 26.10.2023 (Annexure P-3), upon which an application for restoration of the suit was moved on 04.11.2023. Reply to the same was filed by the respondent-defendant on 14.10.2024 and the suit was restored to its original number on 05.12.2024. He submits that thereafter, the first date for cross-examination of DW1 and DW2 was 16.01.2025. He submit that prior to this, even 26.10.2023 was the first date for cross-examination of DW1 and DW2 as the matter had remained pending on account of certain corrections, which were required to be made. He submits that the impugned order has prejudiced the rights and interest of the petitioner. Learned counsel submits that one opportunity be granted to the petitioner-plaintiff to cross-examine DW1 and DW2.

5. I have considered the submissions made by learned counsel for the petitioner.

6. There would be no necessity of issuing notice to the respondents, for, in view of the nature of the order that is proposed to be passed, no prejudice would be caused to them.

7. The order dated 26.10.2023 vide which the suit was dismissed-in-default is on record as Annexure P-3. The application for restoration of the suit is also on record as Annexure P-4, so is the reply to the application, which is on record as Annexure P-5. The suit was restored to its original number on 05.12.2024 (Annexure P-6) and the matter was posted for 16.01.2025 for cross-examination of DW1 and DW2. On 16.01.2025, for, learned counsel representing the petitioner-plaintiff did not appear in the Court, the Court,



while noticing that the witnesses were present since 10.30 a.m. and also noticing that on 26.10.2023 also, no one had appeared on behalf of the plaintiff, ordered the cross-examination of DW1 and DW2 to be treated as 'nil'. Though, this Court does not find any illegality in the said order, for, delays in disposal have to be dealt with sternly, considering the fact that after dismissal of the suit on 26.10.2023, an application for restoration of the suit was moved instantly and the delay in restoration occurred only on account of the late filing of the reply to the application, the Court could have and should have taken a comparatively lenient view. It has to be borne in mind that matters should be decided on merits and parties should normally not be non-suited on technicalities. In the considered opinion of this Court, one more opportunity deserves to be granted to the petitioner-plaintiff to cross-examine DW1 and DW2.

8. In view of the above, the present revision petition is allowed and the order dated 16.01.2025 (Annexure P-7) passed by the Court of learned Addl. Civil Judge (Sr. Divn.), Palwal is set aside. The trial Court is directed to give one effective opportunity to the petitioner-plaintiff to cross-examine DW1 and DW2 on a date to be fixed as per the convenience of the learned trial Court. This shall, however, be subject to payment of costs of Rs.10,000/ to be deposited with the Punjab and Haryana High Court Bar Association, Chandigarh.

(VIKRAM AGGARWAL)
JUDGE

February 20, 2025

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No