

CR-1158-2018

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2026:PHHC:066335



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

Sr. No.142

CR-1158-2018

Date of Decision: 30.04.2026

MOHAMMAD SHARIF

....Petitioner

Versus

AZHAR ALI AND ANOTHER

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Mr. Jai Bhagwan, Advocate for the petitioner.

None for respondent No.1.

None for respondent No.2.

ARCHANA PURI, J. (Oral)

Perusal of the paperbook reveals that even though, respondents No.1 and 2 had made appearance through respective counsel, as observed in the order dated 28.08.2018, but however, thereafter, none had been making appearance on behalf of the said respondents. Even today, none has made appearance on their behalf. As such, respondents No.1 and 2 are proceeded against *ex parte*.

Counsel for the petitioner heard.

Challenge in the present revision petition is to the order dated 08.01.2018 (Annexure P-6), passed by learned trial Court, whereby an



application filed by the petitioner (who is plaintiff before learned trial Court), for giving liberty to cross-examine the witness, was dismissed.

The essential facts to be noticed are as hereingiven:-

Initially, the petitioner had filed a suit for permanent injunction, against the respondents, namely, Azhar Ali Khan and Nasar Ali Khan. After framing of issues, evidence was being led. When the case was at the stage of recording of the evidence by the petitioner/plaintiff, the petitioner himself had made appearance as witness and tendered into evidence his affidavit. However, his cross-examination was not recorded and the case was adjourned further, from time to time, for the said purpose. Consequently, the evidence of the petitioner/plaintiff was closed by order, vide order dated 11.08.2017, passed by learned trial Court.

Being aggrieved by the aforesaid order, the petitioner had filed an application for giving liberty to cross-examine the witness/plaintiff-Mohammad Sharif, copy whereof is Annexure P-5. After hearing the counsel for the parties, the said application was dismissed by learned trial Court, vide impugned order dated 08.01.2018.

Being further aggrieved, the petitioner has filed the present revision petition.

The requisite order dated 11.08.2017, vide which the evidence was closed by order, is reproduced as herein:-

“XXXX XXX XXXX

No PW is present. Plaintiff evidence is hereby closed by order. Now to come up on 27.09.2017 for DWs.

XXX XXXX XXXX XXXXXX”



Perusal of the aforesaid order reveals that even though, the evidence was closed by order, but however, there is no reason assigned about the constrained circumstances, under which learned trial Court had closed the evidence. Anyhow, it is essential to take notice of various zimini orders, as reproduced by the petitioner in the grounds of revision, which reveals about the case having been adjourned, from time to time, for recording of evidence of the petitioner. Cost was also imposed by learned trial Court and thereafter, petitioner/plaintiff-Mohammad Sharif, had appeared himself, in witness-box as PW-4, on 23.02.2017. He was examined in chief and it was on the request of the counsel for the defendants that his cross-examination was deferred and the case was adjourned for 28.03.2017, for the said purpose. On 28.03.2017, Mohammad Sharif was present in the Court for cross-examination, but however, the cross-examination was partly conducted and the further cross-examination was deferred, as the Court time was over and the case was adjourned for 24.04.2017. On the date fixed i.e. 24.04.2017, the petitioner/plaintiff himself was not present and the case was adjourned for 15.05.2017. Then, the case was again adjourned for 26.05.2017 and 01.08.2017. On 01.08.2017, even last opportunity was granted and the case was adjourned further for 11.08.2017, on which date, the evidence was closed by order.

Perusal of the aforesaid reveals that even though, there was lapse on the part of the petitioner, in not making appearance on the subsequent dates, after his examination-in-chief and part cross-examination was recorded, but however, simultaneously, various adjournments were also sought at the instance of the respondents/defendants.



Now, it is submitted by the counsel that it was only on account of wrong noting of the date on the brief, as well as the diary, that the witness could not make appearance on 11.08.2017. Further, it is submitted that the date fixed before learned trial Court, was wrongly recorded by the concerned counsel, as 12.08.2017 instead of 11.08.2017. To so substantiate his claim, counsel for the petitioner has placed on record the photocopy of the brief, relating to the file of the case in question, as well as of the diary, maintained by the lawyer concerned, with regard to dates fixed in the cases. The said photocopies amply establish about the date noted down to be 12.08.2017. The mistake in noting of the date, seemingly is bonafide.

In any case, considering the aforesaid fact situation and in the interest of justice, the revision petition is hereby allowed and the requisite order dated 08.01.2018 (Annexure P-6) is set aside. The parties are directed to appear the Court concerned on the next date of hearing. The Court concerned shall give only one opportunity to the petitioner, to make appearance and also shall ensure about recording of the cross-examination of witness-Mohammad Sharif, on the date fixed. In case, due to any constrained circumstance, the cross-examination is not conducted on the date fixed, then the Court shall make efforts to record the cross-examination, within a period of ten days thereafter.

30.04.2026
Himanshu Vats

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes/No