

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****273****CR-1671-2025 (O&M)****Date of Decision : 25.04.2025**

Harsh Kumar

....Petitioner

VERSUS

Sukhbir Singh

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Namit Gautam, Advocate for the petitioner.

Mr. Ranjit S. Bajaj, Advocate for the respondent.

ALKA SARIN, J. (Oral)

1. The present revision petition has been filed by the defendant-petitioner under Article 227 of the Constitution of India challenging the order dated 03.10.2024 whereby the cross-examination of PW5 has been ordered to be treated as 'Nil' and the order dated 14.01.2025 whereby the application for recalling of the order dated 03.10.2024 was dismissed.

2. Learned counsel for the defendant-petitioner would contend that the defendant-petitioner had suffered a paralytic attack on 19.07.2024 and was admitted in hospital from 19.07.2024 to 23.07.2024 and therefore the cross-examination of PW5 (respondent herein) could not be conducted. It is further the contention of the learned counsel that given one effective opportunity, the defendant-petitioner would cross-examine PW5.

3. *Per contra* the learned counsel for the plaintiff-respondent has pointed out that though the reason for not cross-examining the witness on 03.10.2024 was that the defendant-petitioner was admitted in hospital from

19.07.2024 to 23.07.2024, however, on 06.09.2024 the said witness - PW5 - was partially cross-examined and hence the reason given for not conducting the further cross-examination on 03.10.2024 cannot be accepted.

4. At this stage, learned counsel for the defendant-petitioner has pointed out that pursuant to order dated 20.10.2023 passed by the Trial Court, costs of ₹2,000/- have already been deposited, learned counsel for the plaintiff-respondent does not dispute the same.

5. I have heard the learned counsel for the parties.

6. In the present case, no doubt various opportunities were given to cross-examine the witness, PW5, however, the defendant-petitioner failed to conclude the cross-examination. The witness - PW5 - was present on 16.01.2024, 24.01.2024, 07.02.2024, 20.02.2024, 22.03.2024 and 06.09.2024. The impugned order dated 03.10.2024 reveals that despite availing numerous opportunities, the counsel for the defendant-petitioner failed to conclude the cross-examination of PW5 and as such his cross-examination was recorded as 'Nil'. It is an admitted case that the said witness - PW5 - was partially cross-examined and hence his cross-examination could not have been treated as 'Nil'. The witness stood partially cross-examined and there is no reason to write-off that part of the cross-examination. Though the learned counsel for the defendant-petitioner has tried to make out a case that due to the illness of the defendant-petitioner the cross-examination of PW5 could not be carried out, however, the said reason does not appeal to the conscience of the Court inasmuch as on 06.09.2024 the same witness - PW5 - was partially cross-examined. However, since it is

a suit for recovery and in order to do complete justice between the parties, this Court deems it appropriate to grant one effective opportunity to the defendant-petitioner to cross-examine PW5 and to complete his cross-examination, subject to payment of ₹30,000/- as costs to be paid to the plaintiff-respondent which shall be a condition precedent. The Trial Court is further requested not to grant any unnecessary adjournments to either of the parties. Accordingly, the orders dated 03.10.2024 and 14.01.2025 are set aside. The present revision is allowed. Pending applications, if any, also stand disposed off.

7. It is made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case and in case the costs are not paid, the present revision petition shall be deemed to having been dismissed.

25.04.2025
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO