

(2014) 08 P&H CK 0015
In the Punjab And Haryana At Chandigarh
Case No : CR Nos. 5651 and 5666 of 2014

Gurdas Bansal and Others

APPELLANT

Vs

Blue Seas Sites Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 25-08-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 4(2)
Constitution of India, 1950 — Article 227

Citation : (2015) 178 PLR 794

Hon'ble Judges : Bharat Bhushan Parsoon, J

Bench : Single Bench

Advocate : A.K. Kalsy, Advocate for the Appellant;

Final Decision : Dismissed

Judgement

Dr. Bharat Bhushan Parsoon, J.

1. By this common order, I propose to dispose of the above mentioned two revision petitions as challenge in both these petitions is to the order dated 11.8.2014 [Annexure P/3] passed by learned Civil Judge [Junior Division], Mohali. Facts are being taken from Civil Revision No. 5651 of 2014.

A suit for specific performance of an agreement to sell dated 7.1.2006 having been filed by the respondent-plaintiff is pending adjudication before the trial Court. The plaintiff had led entire evidence whereafter an application was moved by the plaintiff that though, he had appeared as a witness, no cross-examination had been effected on him and thus, cross examination was required to be, effected. This request of the respondent-plaintiff was allowed subject to payment of costs. This order of 11.8.2014 passed by the lower Court is under challenge by invoking supervisory powers of this Court under Article 227 of the Constitution of India.

2. It is claimed by the petitioners that since evidence of the parties had been concluded and the suit was at the final stage, the application for cross-

examination of the plaintiff could not have been allowed as it was filed only with a purpose to fill-in the lacunas left by the plaintiff in its case. Support has been sought from a decision of Hon''ble Supreme Court of Bagai Construction Thr. Its Proprietor Mr. Lalit Bagai Vs. Gupta Building Material Store, , wherein inter-alia, application for recalling of a witness to put certain documents to him in his cross-examination, had been moved. It was a case of recall of witness when entire testimony of the said witness had been recorded.

3. With due deference to the law laid down in the cited authority of Hon''ble Apex Court, the present case clearly is of omission where the respondent-plaintiff as also the lower Court remained under the impression that all the witnesses of the respondent-plaintiff had been cross-examined and thus, evidence on behalf of respondent-plaintiff had been recorded. In fact, no cross-examination on the plaintiff as a witness had been done and thus, the statement was not complete. This case thus, is under Order XVIII Rule 4[2] C.P.C. Finding it to be a case of omission, prayer of the respondent-plaintiff to offer himself for cross-examination by the defendant was accepted.

4. Looking the matter from another angle, since it is a suit for specific performance of the agreement to sell and the plaintiff himself had tendered his affidavit by way of examination-in-chief, if he is not allowed to be cross-examined, his evidence is not going to be of any avail. Consequently, noticing that the plaintiff though, had appeared in the witness box and had furnished his examination-in-chief, but has not been cross examined, the Lower Court allowed the plaintiff to appear as witness to be cross-examined by the other parry.

5. Perusal of the paper book reveals that the defendants had not been cross-examining the witnesses on the date when their examination-in-chief was recorded by the Court Such procrastination of the defendants in effecting cross-examination on the witnesses of the plaintiff not only resulted in the delay but also created a situation where the plaintiff was left out from cross-examination.

6. In view of the circumstances, allowing of the application for production of the plaintiff in evidence for cross examination by the defendants is not only permissible, but is even otherwise necessary for complete and effective adjudication of the entire matter. Consequently, there being no infirmity in the impugned order, the same is affirmed.

7. It is, however, made clear that once cross-examination of the plaintiff is being allowed, the petitioner-defendants would also be given an opportunity to lead any further evidence, if they so desire. This would be necessary because the defendants might have concluded their evidence knowing it well that the plaintiff as a witness had not been cross examined by them. The revision petitions are, thus, dismissed in limine.