

(2011) 03 P&H CK 0725

In the Punjab And Haryana At Chandigarh

Case No : C.M. No. 6656-CII of 2011 and Civil Revision No. 5945 of 2010 (O and M)

Prakash Singh

APPELLANT

Vs

Ajit Singh and Another

RESPONDENT

Date of Decision : 23-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2A
Constitution of India, 1950 — Article 227

Citation : (2011) 03 P&H CK 0725

Hon'ble Judges : Ram Chand Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ram Chand Gupta, J.

C.M. No. 6656-CII of 2011

1. Heard.

2. In view of the facts mentioned in the application, the same is allowed. Order dated 7.3.2011 dismissing the revision petition for non-prosecution is recalled.

3. Registry is directed to restore the petition at its original number. Application stands disposed of accordingly.

C.M. No. 30859-CII of 2010

4. Requests for placing on record zimni orders.

5. The same are taken on record subject to all just exceptions.

6. Application stands disposed of accordingly.

Civil Revision No. 5945 of 2010

7. The present revision petition has been filed under Article 227 of the

Constitution of India for setting aside impugned order dated

C.M. No. 6656-CII of 2011

8. I have heard learned Counsel for the Petitioner and have gone through the whole record carefully including the impugned order passed by learned trial Court.

9. Facts relevant for the decision of present revision petition are that an application under Order 39 Rule 2A of the CPC (hereinafter to be referred as the "Code") was filed by Petitioner for taking action against the Respondents, on the plea that they have violated the order of the Court dated 20.8.2004, vide which Respondents were directed to maintain status quo qua possession of the suit property. The application was contested by Respondents. Parties were called upon to adduce evidence. Evidence of Petitioner-applicant was closed and the case was fixed for evidence of the Respondents, when application was filed on behalf of the Respondents that Petitioner-applicant filed affidavit of his statement in the evidence on 6.9.2007 and however, instead of giving any opportunity to Respondents to cross-examine him, the case was adjourned for evidence of the Respondents. The application was opposed by Petitioner-applicant, however, the same was allowed by learned trial Court vide impugned order by observing that the case was inadvertently fixed for evidence of the Respondents and rather the same should have been adjourned first for cross-examination of Petitioner-applicant, who has already filed affidavit of his statement, as Respondents are having right to cross-examine the applicant.

10. In view of these facts, it was the duty of the Court to give an opportunity to Respondents to cross-examine the Petitioner after he tendered in evidence affidavit of his statement. Even statement of Petitioner

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11. Hence, it cannot be said that any illegality or material irregularity has been committed by learned trial Court in passing the impugned order and that a grave injustice or gross failure of justice has occasioned thereby, warranting interference by this Court.

12. Moreover, law is well settled in *Surya Dev Rai v. Ram Chander Rai and Ors.* 2004(1) RCR (Civil) 147 that mere error of fact or law cannot be corrected in the exercise of supervisory jurisdiction by this Court. This Court can interfere only when the error is manifest and apparent on the face of proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law and that a grave injustice or gross failure of justice has occasioned thereby.

13. Hence, the present revision petition is, hereby, dismissed being devoid of any merit.