
(2022) 03 MP CK 0038

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 4727 Of 2019

Praveen Kushwah And Others

APPELLANT

Vs

Gajadhar Singh And Others

RESPONDENT

Date of Decision : 11-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 227

Code Of Civil Procedure, 1908 — Section 151, Order 17 Rule 1

Citation : (2022) 03 MP CK 0038

Hon'ble Judges : G.S. Ahluwalia, J

Bench : Single Bench

Advocate : Vivek Vyas, Anoop Gupta

Final Decision : Disposed Of

Judgement

Sunita Yadav, J

This present petition under Article 227 of the Constitution of India is filed challenging the order dated 30.08.2019 passed by Second Civil Judge, Class II, Gwalior in Case No.15-A/2013, by which an application under Section 151 of CPC for granting an opportunity to the petitioners/defendants to get the defendants' witnesses cross-examined by the plaintiff was dismissed.

The relevant facts to decide the petition are that the respondent No.1/plaintiff filed a suit for recovery of possession against the petitioners/defendants. After completion of plaintiff's evidence, the case was fixed for examination of defendants' witnesses on various dates. The case was fixed on 22.08.2019 for remaining cross-examination of defendant No.2 and on the said date defendant No.2 was absent. The counsel for the defendants filed an application under Order 17 Rule 1 of CPC seeking some time to produce defendant No.2 for cross-examination. The examination in chief of defendant No.2 had already been completed earlier. On 22.08.2019, learned trial Court has rejected the application under Order 17 Rule 1 of CPC filed by the counsel for defendants and fixed the

case for final arguments on 30.08.2019. On 30.08.2019, learned counsel for the petitioners/defendants filed an application under Section 151 of CPC and prayed to grant an opportunity for further cross-examination of defendant No.2 which was rejected by the order impugned.

Learned counsel for the petitioners submitted that the order impugned is against the settled principle of law and perverse. He further argued that the order has been passed on technical grounds and pointed out that on earlier occasions, some witnesses of defendant No.2 were present but counsel for the plaintiff has not cross-examined them.

On the other hand, learned counsel for the respondents submitted that the impugned order is in accordance with settled principle of law and needs not to be interfered with.

Heard the learned counsel for the parties and perused the record.

The perusal of record reveals that on 30.08.2019, defendant No.2 was present before the Court. Learned trial Court has observed that an application under Section 151 CPC filed by the petitioners/defendants comes within the purview of review and needs to be registered as miscellaneous judicial case. The learned trial Court has further observed that the Court does not have power to review its own order and rejected the application. The reasons assigned by learned trial Court for rejecting the application is solely on technical ground without taking into consideration that the witness/defendant No.2 was present in the Court. The trial Court should have been considered that earlier the examination in chief of this witness/defendant No.2 had already been completed and he was present for his cross-examination but on account of some reason, counsel for respondent/plaintiff had not completed cross-examination.

In view of the facts and circumstances as discussed above and in the interest of justice, this Court is of the considered view that an opportunity for getting the cross-examination done of petitioners/defendant No.2 should be given. Consequently, the impugned order dated 30.08.2019 passed by Second Civil Judge, Class II, Gwalior in Case No.15-A/2013 is hereby set aside. The petitioners/defendant No.2 is granted an opportunity for getting the cross-examination done upon paying cost of Rs.1,000/- to the plaintiff.

Consequently, the petition is allowed and parties are directed to appear before the trial Court on 11.04.2022 and on subsequent dates as may be fixed by the same Court. Defendant No.2 shall remain present before the trial Court for further cross-examination by the plaintiff.

With the aforesaid directions, the petition is disposed of.

Certified copy as per rules.