

CS No.1225 of 2017

CNR No: CHCH02-002726-2017

Application recalling the order dated 05.9.2024.

Present: Sh. Vinay Bhandari Advocate, Counsel for the plaintiff.
Ms. Shifa Kler Advocate, counsel for the defendant no.1.
Sh.Dewan Chand Advocate, counsel for the defendants no.2 to 5.

ORDER

Heard on the above referred application, filed on behalf of the defendant no.1/applicant-Ajay Sondhi, vide which the opportunity to cross-examine PW-1 was not given and was treated as Nil. It has been averred in the present application that on 05.9.2024, the counsel for the defendant could not appear to cross-examine PW-1, due to the reason that there were two cases titled as 'Ajay Sondhi Vs. Noor Resort' and the present case, which were clubbed together and were sent to Mediation on request of both the parties, for the purpose of compromise and those cases remained in the Mediation for 3¼ months and ultimately, the mediator was successful in mediation of case titled as 'Ajay Sondhi vs. Noor Resorts', whereas, no compromise was effected in the present case; that both the above titled cases are connected and in both the cases, the property in dispute is the same and for that reason, both the cases were clubbed together by the Hon'ble District Judge, Chandigarh; that the applicant/defendant as well as the plaintiff are expecting to get the present case compromised and due to this reason, the counsel for the applicant did not cross-examine PW-1 and this court had treated the opportunity to cross-examination of PW-1, by the counsel for the defendant as Nil; that more over the counsel for the applicant/defendant was not supplied with the copy of affidavit of PW-1, tendered by the plaintiff; that the absence on the part of counsel for the defendant/applicant was neither intentional nor willful but due

to the reason mentioned above. Ld. Counsel for the defendant/applicant further prayed for allowing the present application.

2. On the other hand, Ld. Counsel for the plaintiff had suffered a separate statement on 07.11.2024 that he does not want to reply to the present application and will straightway address the arguments on this application. Ld. Counsel for the plaintiff has submitted during the course of arguments that the present application has been filed with an intention to delay the proceedings of the present case and no ground to allow the same is made out. Ld. Counsel for the plaintiff further prayed for dismissal of the present application.

3. Perusal of the present case file shows that the plaintiff has filed the present suit for possession by way of specific performance of agreement to sell dated 1.1.2010 *inter se* the parties in respect of booth No.121, Sector 37C, Chandigarh. Further, perusal of the case file shows that examination in chief of PW-1 Yogesh by way of affidavit was tendered on 28.11.2023, copy of which was supplied to Ld. Counsel for the defendants on the said date itself. Thereafter, PW-1 Yogesh Kumar remained present in the court on 15.1.2024, 13.2.2024, 09.4.2024 and on 05.9.2024 for the purpose of his cross-examination, but Ld. Counsel for the defendant failed to cross-examine him despite getting last and final opportunities and as such, on 05.9.2024, the opportunity given to cross-examine the said witness was treated as Nil on the part of Ld. Counsel for the defendant no.1/applicant. Now, the present application has been filed by the defendant no.1/applicant for recalling the order dated 05.9.2024 and for allowing to cross-examine PW-1, on the ground that Ld. Counsel for the defendant no.1 has not come in the court on the said date under the impression that in the present case also the compromise will be effected. It is a settled principle of law that every case be decided on merits after hearing both the parties and after giving due opportunities to both the parties to lead their respective evidences. The interest of justice also demands that the defendants right to cross-examine the plaintiff witnesses should not be curtailed unless and until, the circumstances of a particular case forces the

court to do so. In view of the averments made in the present application and in view of the above mentioned facts and circumstances, this court is of the considered view that the present application deserves to be allowed. Accordingly, the same is hereby allowed, subject to payment of costs of Rs.5000/-, out of which, Rs.2500/- is to be paid by the defendant no.1 to the plaintiff and Rs.2500/- to be deposited in the DLSA, Chandigarh and subject to the condition that only one opportunity to cross-examine the plaintiff witnesses i.e. PW-1 will be granted to the Ld. Counsel for the defendant no.1. It is hereby further clarified that no further opportunity to cross-examine the witnesses i.e. PW-1 will be granted under any circumstances. Application stands disposed of accordingly.

Now for cross-examination of PW-1, to come up on 30.11.2024
Remaining P.Ws be also brought on the said date, subject to last and final opportunity. Dasti summons be issued, if required.

Pronounced: 11.11.2024

Rahul Garg,
Civil Judge(Sr.Division),
Chandigarh/PB-0319