

**(2011) 07 P&H CK 0173**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** C.R. No. 4051 of 2011

Narang Singh

APPELLANT

Vs

State Bank of Patiala and  
Another

RESPONDENT

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**Date of Decision:** July 7, 2011

**Acts Referred:**

- Constitution of India, 1950 - Article 227

**Hon'ble Judges:** Mehinder Singh Sullar, J

**Bench:** Single Bench

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**Judgement**

Mehinder Singh Sullar, J.

The crux of the facts, culminating in the commencement, relevant for disposal of the present revision petition and emanating from the record is that, State Bank of Patiala-Respondent No. 1-Plaintiff-(hereinafter to be referred as "the Plaintiff-Bank") filed the suit against Surinder Paul son of Tara Chand, Respondent No. 2-Defendant No. 1(main loanee) and Narang Singh son of Acchar Singh-Petitioner-Defendant No. 2(Guarantor) for recovery of Rs. 1,61,919.71 Ps.

2. As, Defendant No. 1 did not contest the suit, despite service, therefore, ex parte proceedings were ordered against him. However, Petitioner-Defendant No. 2(Guarantor) contested the suit.

3. The main suit was fixed for 11.08.2010 and PW2-Rajinder Kumar was present on that day, but the counsel for the Petitioner-Defendant No. 2 did not appear to cross-examine him. Ultimately, the trial Court treated the cross-examination of PW2 as "Nil" by way of impugned order dated 11.08.2010.

4. Petitioner-Defendant No. 2 did not feel satisfied with the impugned order and filed the instant revision petition, invoking the provisions of Article 227 of the Constitution of India.

5. After hearing the learned Counsel for the Petitioner, going through the record with his valuable assistance and after considering the entire matter deeply, to my mind, the present revision petition deserves to be partly accepted in this context.
6. At the very outset, in exercise of power under Article 227 of the Constitution of India, I hereby exempt the issuance of notice to Respondent No. 1-Plaintiff, in order to save it from the expenditure of counsel fees, litigation expenses in this Court and the delay in disposal of the suit, particularly when it can be compensated with adequate costs in this respect.
7. As is evident from the record that the case was slated for evidence of the Plaintiff and PW2 Rajinder Kumar was present for cross-examination, but counsel for Petitioner-Defendant No. 2 did not appear to cross-examine him. Consequently, the trial Court treated the cross-examination of PW2 Rajinder Kumar as "Nil" by virtue of impugned order dated 11.08.2010, which is as under:

PW2 Rajinder Kumar is present for cross-examination, but counsel for Defendant has not come present for cross-examination. No ground is made out for giving opportunity to cross-examine the said witness and as such, cross-examination of PW2 Rajinder Kumar is treated "nil". Now for remaining Plaintiff evidence to come up on 31.8.10.
8. Aggrieved by the order, Petitioner-Defendant No. 2 moved an application for recalling/setting aside the order dated 11.08.2010, which was dismissed as well by the trial Court, by means of impugned order dated 25.03.2011, which in substance is, as under:

Heard on the application for setting aside the order dated 11.8.10. Perusal of the file reveals that on 11.8.10, the cross-examination of the witness Rajinder Kumar was treated Nil. The other Counsel was given the opportunity to cross-examine the said witness but the counsel did not appear to cross-examine the witness on the date fixed. On the other hand, Defendants counsel is taking the plea that he was not feeling well on that date, but this fact was not brought forth by the Id.counsel before the court on that date. This Court does not deem it fit in allowing the application as it does not appear to the mind of the court that the situation must be that and it is merely delaying tactics. Hence, the application is dismissed. For P Ws to come up on 10.6.11.
9. It is not a matter of dispute that neither the counsel for the Petitioner-Defendant No. 2 appeared in the Court to cross-examine PW2 Rajinder Kumar, nor any cogent ground was put-forth on 11.08.2010 in this regard, when the impugned order was passed. Subsequently, the application filed by Petitioner-Defendant No. 2 for recalling/setting aside the order dated 11.08.2010 was also dismissed by the trial Court. The reason put-forth in the application filed by Petitioner-Defendant No. 2 that his counsel was not feeling well on 11.08.2010, was negated by the trial Court on the ground that it is merely a delaying tactics.

10. Ex facie, it appears to be true. Be that as it may, but it ipso facto is not sufficient ground to deny the opportunity to the Petitioner-Defendant No. 2 (who was only a Guarantor), to cross-examine PW2 Rajinder Kumar, particularly when the main loanee Surinder Pal-Defendant No. 1 did not contest the suit. It is now well-settled principle of law that a poor litigant cannot legally be permitted to suffer on account of inaction, negligence or default of his counsel. The concept of fair trial is essential to decide the real controversy between the parties. To me, if the opportunity to cross-examine PW2 Rajinder Kumar is not granted to the Petitioner-Defendant No. 2, then it will inculcate and perpetuate injustice to him (poor guarantor). Moreover, no prejudice is going to be caused to the Plaintiff-Bank, specially when it can be compensated with adequate costs in this relevant connection. More so, when the case is still fixed for evidence of the Plaintiff.

11. In the light of aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the course of trial of the suit, the instant revision petition is hereby partly accepted. Consequently, the impugned orders are hereby set aside. The trial Court is directed to secure the presence of PW2 Rajinder Kumar and to grant adequate opportunity to Petitioner-Defendant No. 2, to cross-examine him (PW2). However, this would be subject to the payment of Rs. 5,000/- (Rupees Five Thousand) as costs, to be paid by the Petitioner-Defendant No. 2 to the Plaintiff-Bank in this relevant behalf.