

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

C.R. No. 1270 of 2015 (O & M)

Date of decision: 27.02.2015

Sarfuddin

....Petitioner(s)

Versus

Mohd. Sharif and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Mohd. Arshad, Advocate,
for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

C.M. No. 4422-CII of 2015

Application for placing on record zimini orders as Annexures P-4 to P-13 and for exemption from filing certified copies of the same is allowed, subject to all just exceptions.

The said Annexures are taken on record.

C.R. No. 1270 of 2015

Challenge in the present revision petition filed under Article 227 of the Constitution of India is to the order dated 28.01.2015 (Annexure P-3) whereby, the evidence of the defendant was closed by order of the Court after two defendant witnesses were examined.

Counsel for the petitioner has submitted that only two effective opportunities were given and the suit is for specific performance and the petitioner will be gravely prejudiced in case he is not allowed to bring on record the complete evidence since valuable civil rights are involved regarding the land measuring 8 kanals.

A perusal of some of the zimini orders which have been placed

on record would show that the orders passed by the Court below are well justified as such since on 10.12.2014, defendant witnesses were not available and the case was adjourned to 07.01.2015 for DWs subject to payment of ₹200/- as costs. On the said date, no defendant witness was again present and the case was adjourned to 14.01.2015 and again defendant witness was not present. The Court, however passed the order on 14.01.2015 that it was last opportunity and the evidence was deemed to be closed. Repeated requests were made by counsel for the defendant at that stage and the Court gave permission that if any evidence is brought before rebuttal evidence on his own responsibility, the same will be recorded and adjourned the case for 27.01.2015. Resultantly, on 27.01.2015, two defendant witnesses were present and they were duly examined and the case was fixed for cross examination on the next day on 28.01.2015, when the impugned order has been passed. Thus, it is apparent that the Court has been indulgent with the petitioner.

In such circumstances, keeping in view the basic principle that the rules of procedure are hand-maids of justice and a party should be given an effective chance to defend his case, specially where serious civil consequences are involved, this Court is of the opinion that the other side can be adequately compensated by payment of costs.

In view of the above, this Court is of the opinion that the present petition is liable to be allowed. No notice is being issued to the respondents as it will unnecessarily entail unnecessary expenses and delay the matter. Even if they put in appearance, the result would remain the same. However, it is open to the respondents to file an appropriate application for recalling of the order in case there is any concealment of fact.

Accordingly, keeping in view the fact that the valuable civil rights of the petitioner are involved and the case is fixed for 11.03.2015 as contended for rebuttal, one last opportunity is granted to the petitioner to produce further evidence on the said date at his own risk and responsibility. In case the petitioner does so, the plaintiff will be given appropriate opportunity to cross examine. Accordingly, the said order dated 28.01.2015 (Annexure P-3) is modified to this extent by setting aside the closing of the evidence. For the negligent and casual attitude of the defendant the plaintiffs will be entitled for a sum of ₹5,000/- as costs. Costs be paid before the evidence is led.

Petition stands accordingly allowed.

27.02.2015
shivani

(G.S. SANDHAWALIA)
JUDGE