

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

Civil Revision No. 1506 of 2015 (O&M)  
Date of decision: 21.4.2015

**Major Singh**

**.. Petitioner**

**v.**

**Kulwant Singh and others**

**.. Respondents**

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Naresh Kaushal, Advocate for the petitioner.

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Rajesh Bindal J.

The plaintiff is before this court impugning the order dated 2.2.2015, vide which his evidence was closed by order of the court.

The suit was filed by the petitioner-plaintiff for mandatory injunction directing respondents No. 1 to 4 to transfer part of the land, besides challenging a mutation sanctioned in their favour qua the rights of the petitioner-plaintiff. The suit was filed on 2.6.2008, in which, as is evident from the impugned order, the issues were framed in October, 2010. Ever since then, the case remained pending for evidence of the plaintiff, which was closed by order of the court on 2.2.2015.

Impugning the aforesaid order, learned counsel for the petitioner submitted that an official witness had been summoned, for which process fee/diet money had been deposited. On account of his non-appearance along with the record summoned, even bailable and non-bailable warrants had also been issued. His salary was also attached, but he did not appear. For that reason, the petitioner-plaintiff should not be made to suffer. In case, one opportunity is granted, the petitioner will conclude his entire evidence on the date fixed. The respondents can be compensated with

suitable cost.

After hearing learned counsel for the petitioner, I do not find any reason to interfere with the impugned order. The suit was filed on 2.6.2008. As is evident from the facts noticed by the court below in the impugned order, the issues were framed in October, 2010. Though all the zimni orders, passed by the court below from that date onwards, had not been produced, however, still from the orders produced on record, it is evident that the petitioner had been taking the case quite casually.

As far as summoning of the official witness from the office of Sub Divisional Magistrate, Ropar and his non-appearance is concerned, a perusal of the order dated 14.3.2011 shows that the aforesaid witness had been summoned, but did not appear. He was ordered to be summoned through bailable warrants for 2.6.2011. On 2.6.2011, he was again summoned for 4.10.2011. Thereafter, the petitioner-plaintiff sought to examine other witnesses. He never thought of pressing for appearance/summoning of the witness from the office of Sub Divisional Magistrate. The issue regarding summoning of witness from the office of Sub Divisional Magistrate was taken up again by the petitioner on 16.4.2014, when it is noticed that he did not appear in court despite service, hence, was directed to be served through bailable warrants. His salary was attached. He appeared in the court on 8.7.2014 and stated that the summoned record had been consigned to record with Tehsildar, Kharar. The requisite document in support thereof was produced before the court. The record was ordered to be summoned from the concerned office. The order passed on 10.7.2014 mentions that the summons issued to the concerned Clerk were received back unserved as he had gone to attend proceedings in some other court. Last opportunity was granted to the petitioner-plaintiff to conclude his evidence. The plaintiff was to ensure service of the witness. The order specifically records that no further opportunity shall be granted. Thereafter, the case was adjourned for nine dates of hearing, the last being on 21.1.2015, but on none of the aforesaid dates, the petitioner-plaintiff ever raised the issue regarding summoning of the witness from the office of Tehsildar. Though some of the orders

specifically record that the same shall be last opportunity for conclusion of entire evidence of the petitioner-plaintiff. On 21.1.2015 the court below passed the following order:

“Despite grant of last opportunity, no PW is present. At the request from the counsel for the plaintiff, to come up on 2.2.2015 for conclusion of remaining entire evidence of the plaintiff at own responsibility, subject to deposition of cost of Rs. 1000/- with free legal aid. This shall be the last opportunity for the same.”

On 2.2.2015, neither the cost was paid nor any witness was present. Under these circumstances, the court had no option but to close evidence of the plaintiff-petitioner by order of the court.

Seeing the conduct of the petitioner-plaintiff, where during the period of more than 4 years despite grant of numerous opportunities, he had not been able to conclude the evidence, I do not find any error in the order passed by the court below in closing his evidence. The petition is, accordingly, dismissed.

(Rajesh Bindal)  
Judge

21.4.2015  
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