

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

Civil Revision No. 1802 of 2015 (O&M)

Date of decision : 13.3.2015

Iqbal Singh

..... Petitioner

VS

Sukhraj Singh and others

..... Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Narinder Kumar Vadehra, Advocate, for the petitioner.

Rajesh Bindal J.

Prayer in the present petition filed under Article 227 of the Constitution of India is for setting aside of order dated 20.2.2015 passed by the learned court below, vide which the evidence of the petitioner-plaintiff has been closed by order of the Court.

For the view I am taking in the present petition, I do not deem it appropriate to issue notice to the respondents, as the same would unnecessarily delay not only disposal of the present petition but the suit as well.

Learned counsel for the petitioner submitted that the suit was filed by the petitioner-plaintiff on 15.10.2009 for permanent injunction against the defendants. After completion of pleadings, the issues were framed on 9.11.2010. Thereafter, the application for stay remained pending. On 16.4.2011, the case was taken up as the Presiding Officer was to proceed on earned leave from 18.4.2011 to 30.4.2011. On 26.7.2012, PW1 was examined and his cross-examination was deferred to 20.9.2012 on request of counsel for defendant nos. 2 to 4. On 20.9.2012, the case was transferred to other Court. On the next date of hearing i.e. 10.10.2012, the case was again adjourned to 30.1.2013 as no PW was present. On 30.1.2013, PW1 Mandeep Singh was present but he was not cross-examined. The learned

Court below appointed Local Commissioner for recording of evidence and the case was adjourned to 2.3.2013. On the adjourned date, as report of the Local Commissioner was not received, the case was adjourned to 8.4.2013. On 8.4.2013 one PW was present but his cross-examination was deferred on the request of counsel for the defendants. On 29.5.2013, the case was received in the Court by way of transfer. Thereafter, on 2-3 dates of hearing, the case was either adjourned on request of counsel for the plaintiff-petitioner or the Presiding Officer was on leave. On 1.8.2014, PW1 was cross-examined and the case was adjourned to 19.8.2014 but on 16.8.2014 and 6.10.2014, the case was adjourned as the Presiding Officer was to proceed on leave. Lastly on 20.2.2015, the learned court below closed the evidence of the petitioner by order of the Court. Learned counsel for the petitioner submitted that the petitioner only is not responsible for delay. It is the respondents also on whose request the cross-examination was deferred. The petitioner has tried his best to conclude the evidence but due to reasons beyond his control, it could not be concluded. He submitted that the petitioner is 76 years of age and is not keeping good health. He prays that in case one opportunity is granted, he will conclude his entire evidence.

Heard learned counsel for the petitioner and perused the paper book.

The facts of the case are borne out from the record produced by the petitioner. As is evident from the zimni orders, it is not that only the petitioner was responsible for delay, rather on some dates, the cross-examination of the PWs was deferred on the request of counsel for the defendants. On some occasions, the Presiding Officer was on leave and some time the case was transferred to other Court. The case is now stated to be fixed before the court below on 23.3.2015. It is the suit filed by the petitioner and he cannot be stated to be interested in delaying the matter.

Considering the facts and circumstances of the case, in my opinion, the petitioner deserves to be granted one effective opportunity to lead evidence. The same shall either be on the next date of hearing fixed before the court below i.e. 23.3.2015 or a date to be fixed by the Court for the purpose. The same shall be subject to payment of cost of ₹ 50,000/- to

the defendants by way of demand draft. Payment of costs shall be pre-condition. The impugned order passed by the learned court below is modified accordingly.

The revision petition is disposed of in the manner indicated above.

13.3.2015

vs.

(Rajesh Bindal)
Judge