

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

Civil Revision No. 1956 of 2015 (O&M)

Date of decision : 19.3.2015

Samadh Baba Nihal Gir and another Petitioners
vs
Teka and others Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Rajinder Goyal, Advocate, for the petitioners.

Rajesh Bindal J.

Prayer in the present petition filed under Article 227 of the Constitution of India is for setting aside order dated 10.3.2015 and 12.3.2015 (Annexures P-1 and P-2) passed by the learned court below, whereby the evidence of the petitioners-plaintiffs was closed by order of the court.

The proceedings in the present case arise out of a suit for permanent injunction filed by petitioners/plaintiffs against the respondents/defendants. Onus of certain issues was on the defendants.

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 the disposal of the present petition but the suit as well.

Learned counsel for the petitioners submitted that the suit was filed by petitioners/ plaintiffs on 11.6.2010. After filing of written statements, the issues were framed on 29.4.2014. On 21.2.2015, the defendants closed the evidence and the case was fixed for 26.2.2015 for rebuttal evidence by the petitioners. As no rebuttal evidence was present, the case was adjourned to 3.3.2015 and thereafter to 10.3.2015. On 10.3.2015, the petitioners examined PW2 Amarphal and PW3 Ishwar Singh. However, PW4 Diwan Singh Lambardar was not examined as he was busy

in the marriage of his niece. The trial court adjourned the case to 12.3.2015 restricting the petitioners from examining any other witness in rebuttal except PW2 and PW3. On 12.3.2015, the learned court below after cross-examining PW2 and PW3, closed the evidence of the petitioners and not permitted to examine PW Diwan Singh, who was present in Court. He submitted that the petitioners have tried their best to conclude the evidence but as the witness was in personal difficulty, it could not be concluded. He prays that in case one opportunity is granted, the petitioners will conclude their entire evidence.

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

The facts of the case are borne out from the record produced by the petitioners. As is evident from the zimni orders it is not that the petitioners were responsible for delay, rather it was due to personal reason of PW Diwan Singh that he could not appear. It is the suit filed by the petitioners and they cannot be stated to be interested in delaying the matter.

Considering the aforesaid facts, in my opinion, the petitioners deserve to be granted one effective opportunity to conclude their evidence. The same shall either be on the next date of hearing fixed before the court below or a date to be fixed by the Court for the purpose. The same shall be subject to payment of ₹ 5,000/- as costs, which shall be deposited with the District Legal Services Authority, Kaithal. Payment of costs shall be pre-condition. The impugned orders passed by the learned court below are modified accordingly.

The Revision Petition is disposed of in the manner indicated above.

19.3.2015
vs.

(Rajesh Bindal)
Judge