

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

Civil Revision No. 1984 of 2015 (O&M)

Date of decision : 20.3.2015

Harbans Singh

..... Petitioner

VS

Birjinder Singh and others

..... Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Vikram Bali, 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 order dated 25.2.2015 (Annexure P-3) passed by the learned court below, whereby evidence of the petitioner-defendant no.1 was closed by order of the court.

The proceedings in the present case arise out of a suit for declaration filed by respondent no. 1 /plaintiff against the petitioner and respondent nos. 2 to 15/ 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 petitioner submitted that the suit was filed by respondent no. 1/ plaintiff on 12.6.2008. The issues were framed on 26.9.2011 and additional issues were framed on 28.10.2013. The plaintiff closed his evidence on 1.4.2014. Defendant examined DW Harbans Singh in chief on 15.7.2014, however, his cross-examination was deferred as counsel for the plaintiff was not available due to ill health. On 25.8.2014, as

no DW was present, the case was adjourned to 15.9.2014 on which date DW1 Harbans Singh was partly cross-examined as counsel for the plaintiff moved an application for summoning the original file from the revenue record. Again on the adjourned date i.e. on 7.10.2014 DW Harbans Singh could not be examined as the summoned record was not produced. The case was adjourned to 21.10.2014. On 18.11.2014 and 29.11.2014, as no DW was present, the case was adjourned. On 18.12.2014, cross-examination of DW Harbans Singh and statement of Gopal Krishan were recorded and the case was adjourned to 13.1.2015. On 13.1.2015, cross-examination of DW Harbans Singh was deferred to 20.1.2015 as counsel for the plaintiff sought adjournment. On 20.1.2015, Cross-examination of DW Habans Singh was recorded. On 2.2.2015, counsel for the defendant could not conclude his evidence due to death of DW Sukhdev Singh. On 24.2.2015, DW Bhawan Singh was cross-examined and DW Mastan Singh was cross-examined partly and the case was adjourned to 25.2.2015. On 25.2.2015, DW Mastan Singh was cross-examined. As no other DW was present, the learned Court below closed the evidence of the petitioner by order. He further submitted that in case one opportunity is granted, the petitioner will complete his entire evidence on the date fixed.

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

The facts submitted by the learned counsel for the petitioner are borne out from the record. 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 DWs was deferred on the request of counsel for the plaintiff, or the summoned record was not available. One DW Sukhdev Singh also died during the aforesaid period. The case is now stated to be fixed before the court below on 24.3.2015.

Considering the aforesaid facts, 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. 24.3.2015 or a date to be fixed by the Court for the purpose. The same shall be subject to payment of ₹ 20,000/- to the plaintiff 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.

20.3.2015

vs.

(Rajesh Bindal)
Judge