

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

Civil Revision No. 2234 of 2015 (O&M)

Date of decision : 20.4.2015

Dharminder Singh

.. Petitioner

versus

Ranjit Kaur and others

.. Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Bhag Singh, 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 1.12.2014 passed by the learned court below, whereby evidence of the petitioner/ plaintiff was closed by order of the court.

The proceedings in the present case arise out of a suit for possession by way of specific performance of agreement to sell dated 19.6.2010 filed by the petitioner/ plaintiff against the respondents/ 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 disposal of the present petition but the suit as well.

Learned counsel for the petitioner submitted that the petitioner filed the suit for specific performance of agreement to sell dated 19.6.2010 on 26.5.2011. After completion of pleadings, the issues were framed on 26.9.2012 and the case was adjourned to 18.12.2012 for evidence of the petitioner-plaintiff, on which date no PW was present and the case was adjourned to 26.4.2013. On that date, the petitioner filed application for directing the defendants to place on record the original copy of the agreement to sell dated 19.6.2010 and the case was adjourned to 10.6.2013 for filing reply to the application. Thereafter, the case was taken up on

29.5.2013 due to close of civil courts from 1.6.2013 to 15.6.2013 and the case was adjourned to 26.8.2013. As the Presiding Officer was on leave on 26.8.2013, the case was taken up on 27.8.2013 and was adjourned to 7.10.2013 for evidence of the petitioner, on which date reply to the application for production of documents was filed on behalf of defendant nos. 1 to 5 and the case was adjourned to 15.11.2013 for consideration of the application and reply on behalf of defendant nos. 6 and 7. As defendant nos. 6 and 7 did not file reply, the case was again adjourned to 8.1.2014, on which date the application was disposed of. Thereafter, the case was taken up on 21.3.2014 and 21.7.2014. On 21.7.2014, one PW was examined. Another PW was examined in chief and his cross-examination was deferred on request of counsel for the defendants. On 6.10.2014, the case was adjourned to 1.12.2014 for production of entire evidence of the petitioner. As no PW was present on 1.12.2014, the learned court below closed the evidence of the petitioner by order of the Court.

Learned counsel for the petitioner further submitted that the petitioner alone was not at fault. Earlier the application remained pending for want of reply by the defendants. On two dates, the learned Presiding officer was on leave. The submission is that if one opportunity is granted to the petitioner, he will conclude his entire evidence on that date. It was further submitted that only the affidavits have been filed by defendant nos. 6 and 7 in chief and the case stands adjourned to 13.5.2015 for their cross-examination.

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 the cross-examination of one PW was deferred on the request of counsel for the defendants. On two occasions, the Presiding Officer was on leave. The case is now stated to be fixed before the court below on 13.5.2015 for cross examination of defendant nos. 6 and 7, whose affidavits in examination in chief have been filed. It is the suit filed by the petitioner, therefore, he cannot be stated to be interested in delaying the matter.

Considering the aforesaid facts, in my opinion, the petitioner deserves to be granted one opportunity to conclude his evidence. The same shall be on the next date of hearing fixed before the court below i.e. 13.5.2015 only. The same shall be subject to payment of cost of ₹ 3,000/- to each of the defendants by way of demand draft. Payment of costs shall be pre-condition. The learned court below on the date fixed shall first grant opportunity to the petitioner to conclude his evidence and thereafter proceed further with the case. The impugned order passed by the learned court below is modified accordingly. If aggrieved, the respondents shall have right to file application for recalling the aforesaid order.

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

20.4.2015
vs

(Rajesh Bindal)
Judge