

113

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

CR No.3080 of 2015 (O&M)

Date of decision: May 07, 2015

Fateh Chand

.....Petitioner

Versus

Smt. Nisha Gupta and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. J.S. Hooda, Advocate
for the petitioner.

SABINA, J

Petitioner has filed this petition challenging the order dated 13.04.2015, whereby application moved by the petitioner-defendant for summoning witnesses, was dismissed.

I have heard learned counsel for the petitioner and have gone through the record available on the file carefully.

Respondent Nos.1 to 4 have filed suit for possession/joint possession and permanent injunction. Issues were framed on the pleadings of the parties on 13.03.2015 and the case was adjourned for plaintiffs evidence. On 13.03.2015, additional issues were framed and plaintiffs examined one witness in-chief and the cross-examination of the said witness was deferred for 17.03.2015. On 17.03.2015, no witness of the plaintiffs was present and the case was adjourned to 24.03.2015 as last opportunity. On 24.03.2015, plaintiffs closed their oral evidence and the case was adjourned, for documentary evidence to be led by the plaintiffs, for 30.03.2015. On 30.03.2015, the case was again adjourned for documentary evidence to be led by the plaintiffs, as last opportunity. On 06.04.2015, following order was passed:

“No documentary evidence is present. Adjourned requested. Today was the last opportunity. No further adjournment for the same purpose is justified. Hence,

documentary evidence is closed by court order. Now for arguments case fixed on 15.04.2015.”

On 13.04.2015, following order was passed:

“File taken up as ld Counsel for the defendant moved an application for depositing the diet money for summoning the witnesses with the request to allow the same. Heard.

While due regards the submissions of ld. Counsel for the applicant/defendant, this court has observed that the defendant has not filed the list of witness within 15 days after framing of issues as per order dated 03.03.2014, therefore, present application cannot be allowed and same is hereby dismissed. Now to come up on 15.4.2015 the date already fixed.”

A perusal of the above orders reveal that after the close of plaintiffs evidence, the trial Court has not granted any opportunity to the defendants to lead their evidence but has straightway fixed the case for arguments. In fact, on 06.04.2015, the trial Court was required to adjourn the case for defendants evidence as the evidence of the plaintiffs had been closed on the said date. Defendants were also required to be given an opportunity to enable them to lead evidence in support of their defence. It is not understandable as to how the trial Court has fixed the case for arguments vide order dated 06.04.2015 without affording any opportunity to the defendants to enable them to lead their evidence.

Accordingly, this petition is allowed. Order dated 06.04.2015 is set aside to the extent, whereby, it was adjourned for arguments to 15.04.2015. Consequently, order dated 13.04.2015 is also set aside. Trial Court is directed to afford necessary opportunity to the defendants to lead their evidence as per law.

**(SABINA)
JUDGE**

May 07, 2015

m.singh