

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

CR No.3691 of 2015 (O&M)

Date of decision: 28.7.2015

Baljinder Singh

..... Petitioner

Versus

Daljit Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Kewal Krishan, Advocate for
Mr. Premjit Kalia, Advocate, for for the petitioner.
Mr. K.S. Rekhi, Advocate, for the respondent.

RAJESH BINDAL, J

Challenge in the present petition is to the order dated 27.02.2015 (Annexure P-3) vide which the evidence of the petitioner-plaintiff was closed by order of the court. Further challenge has been made to the order dated 16.4.2015 (Annexure P-5), whereby the application filed by the petitioner-plaintiff for permission to lead additional evidence, was dismissed.

Learned counsel for the petitioner submitted that the petitioner-plaintiff filed a suit for possession by way of specific performance of agreement to sell dated 7.6.2011, in which the issues were framed on 10.9.2014. No doubt, on the first date of hearing fixed for evidence of the petitioner-plaintiff, no evidence was produced. However, on the next two dates of hearing, the evidence was produced. Thereafter, on 19.2.2015, again no evidence was present. On 19.2.2015 and 27.2.2015, no evidence being present, the same was closed by order of the court. The suit was filed on 21.10.2013. The intention of the petitioner is not to delay the proceedings, as the evidence could not be produced on account of circumstances beyond his control. He further submitted that immediately thereafter, as per legal advise received, application seeking permission to lead additional evidence was filed. However, the same was also rejected by the learned court below. Learned counsel for the petitioner further submitted that even if, the case for permission to lead additional evidence is not made out, the order closing the evidence of the petitioner may be set aside and he be granted one opportunity to conclude his evidence at his own risk and responsibility, may be subject to payment of cost.

On the other hand, learned counsel for the respondent submitted that

the petitioner having availed of more than three opportunities for leading evidence and having not concluded the same, does not deserve to be granted any further opportunity. There is no error in the order passed by the learned court below. Even the application seeking permission to lead additional evidence was also not maintainable as the ingredients therefor were not made out.

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

After completion of the pleadings, the issues were framed on 10.9.2014. The case was listed for the first time for evidence of the petitioner-plaintiff on 13.10.2014. On 27.2.2015, the evidence of the petitioner-plaintiff was closed by order of the court. In five dates of hearing starting from 13.10.2014 onwards, the petitioner-plaintiff had led evidence on two dates of hearing. The suit is not that old. No doubt, there is some lapse, however, the same is condonable, in the case in hand, as far as the prayer of the petitioner regarding grant of one opportunity to lead evidence by setting aside the order dated 27.2.2015 closing the evidence is concerned. As far as, challenge to the order dated 16.4.2015 seeking permission to lead additional evidence is concerned, the order does not call for any interference by this Court, as the ingredients required for making out a case for leading additional evidence are missing.

For the reasons mentioned above, the present petition is allowed. The impugned order dated 27.2.2015 (Annexure P-3) closing the evidence of the petitioner-plaintiff, is set aside. The petitioner is granted one opportunity to conclude his entire evidence on the date to be fixed subject to cost of ₹ 10,000/- to be paid to the respondent/defendant by way of demand draft. Payment of costs shall be pre-condition. The impugned order passed by the learned court below is modified accordingly.

(RAJESH BINDAL)
JUDGE

28.7.2015

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