

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

Civil Revision No. 3697 of 2015 (O&M)

Date of decision : 28.5.2015

Mukut

.. Petitioner

versus

Smt. Manoj Devi

.. Respondent

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Varun Gupta, 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 7.5.2015 (Annexure P-4) passed by the learned court below, whereby evidence of the petitioner/defendant was closed by order of the court.

The proceedings in the present case arise out of a suit filed by the respondent / plaintiff for specific performance.

For the view I am taking in the present petition, I do not deem it appropriate to issue notice to the respondent, 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 after completion of pleadings, the issues were framed on 7.10.2013. The plaintiff closed her evidence on 22.10.2014 and evidence of the petitioner started on 17.12.2014. On 17.12.2014, the case was adjourned to 23.2.2015 and thereafter adjourned to 31.3.2015. On 31.3.2015, though the case was adjourned to 21.4.2015, however, the same was taken up on 22.4.2015, on which date as no DW could be present, hence, the case was adjourned to 2.5.2015. The petitioner examined one DW on 2.5.2015 and the case was adjourned to 7.5.2015, on which date also statement of one DW was recorded, however, as no other DW was present, his evidence was closed by order of the Court. He further submitted that the petitioner had deposited

the diet money and list of witnesses. He submitted that the witness could not come on 2.5.2015 as he had not received the summon as per report received. On 7.5.2015 the summon was issued to the said witness for the same date which could not possibly be served. The petitioner has tried his best to conclude the evidence but due to reasons beyond his control, it could not be concluded. He prays that in case one opportunity is granted, the petitioner will conclude his entire evidence on the next date of hearing i.e. 4.7.2015.

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

In the present case, the petitioner has already deposited the diet money and list of witnesses. On 31.3.2015 though the case was adjourned to 21.4.2015, however, the same was taken up on 22.4.2015. As per report, the witness could not appear on 2.5.2015 as the summon issued to him was not received back. On the date of hearing when the evidence of the petitioner was closed by order, one DW was present and examined, however, as stated in the petition, summon to other witness was issued for a short date of 7.5.2015 on 2.5.2015 which could not possibly be served.

Considering the aforesaid facts, in my opinion, the petitioner deserves to be granted one opportunity to conclude his evidence at his own responsibility. The same shall be on the next date of hearing fixed before the court below i.e. 4.7.2015 only. The same shall be subject to payment of ₹ 5,000/- as cost to the respondent by way of demand draft. Payment of costs shall be pre-condition. The impugned order passed by the learned court below is modified accordingly. If aggrieved, the respondent shall have right to file application for recalling the aforesaid order.

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

28.5.2015
vs

(Rajesh Bindal)
Judge