

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

**Civil Revision No.513 of 2015
Date of Decision: 28.01.2015**

Ranjit Singh

..... Petitioner

Vs.

Leela Rani and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Ramneek Vasudeva, Advocate for the petitioner.

Mr. J.D.Verma, Advocate for respondent No.2/Caveator.

JASWANT SINGH, J. (ORAL)

The plaintiff is in revision aggrieved by the order dated 15.01.2015 (P-5), passed by learned Civil Judge (Sr. Divn.), Ropar, whereby his evidence has been closed by order.

The undisputed facts are that the petitioner/plaintiff filed a suit for possession by way of specific performance of an agreement to sell dated 02.03.2009 for sale of a plot measuring 49' x 21.6' in Preet Colony, Rupnagar against the vendor/defendant No.1 and the subsequent vendee/defendant No.2. It was pleaded that out of the total sale consideration of ₹ 14 Lacs, a sum of ₹ 7 Lacs towards earnest money stood paid before the target date of 31.03.2009, which was extended to 01.07.2009. Defendant No.1/vendor having sold for the suit property/plot to defendant No.2, vide a registered Sale Deed dated 22.05.2009, a suit was immediately filed by the plaintiff/petitioner on 10.07.2009 seeking specific performance as also setting aside the sale deed. The issues were framed on 17.05.2010.

Learned Counsel for the petitioner concedes that 11 effective opportunities have been availed by the plaintiff while the witness of the extended date of execution of the sale deed and examination-in-chief of the plaintiff has only been adduced. He concedes that the plaintiff has been thoroughly negligent, however, has made a mercy plea for grant of one effective opportunity subject to payment of exemplary cost for concluding the cross-examination of the plaintiff as also adducing the evidence of the marginal witness of the agreement to sell, failing which the entire suit of the plaintiff would fail.

Learned Counsel for defendant No.2/caveator i.e. subsequent vendee submits that the plaintiff has been thoroughly negligent and does not deserve the indulgence by this Court.

Having heard learned Counsel for the parties, it is evident that the plaintiff has been culpably negligent and as such no fault can be found with the impugned order dated 15.01.2015 (P-5), however, it also cannot be lost sight that the plaintiff having paid more than half of the sale consideration, would be totally shut out from even seeking the alternative relief of refund of money, which would be highly unjust resulting into the miscarriage of justice. It is well settled that for the delay and inconvenience caused to the other party, they can be adequately compensated, more so when the plaintiff has not gained anything by delaying the conclusion of the present suit.

At the time of hearing, the plaintiff/petitioner has filed his affidavit dated 28.01.2015, which is taken on record wherein he has agreed to payment of an exemplary costs of ₹ 30,000/-.

In view of the above and keeping in view the totality of the circumstances, the present revision is allowed and the impugned order dated 15.01.2015 (P-5) is modified to the extent that the learned trial Court shall grant

one effective opportunity to the petitioner/plaintiff to lead his entire evidence at his own risk and responsibility subject to payment of ₹ 10,000/- as costs to the defendant No.2 by way of demand draft and another sum of ₹ 20,000/- as costs to the District Legal Services Authority, Rupnagar. The payment of costs shall be as a condition precedent before grant of that opportunity.

Allowed in the above terms.

January 28, 2015
Gagan

(JASWANT SINGH)
JUDGE