

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

C.R. No. 5143 of 2015

Date of decision:- 14.08.2015

Balwant Singh

...Petitioner

Versus

Ranjit Singh and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Karamjit Singh Mangat, Advocate
for the petitioner.

RITU BAHRI J.(Oral)

Plaintiff/Petitioner Balwant Singh (for short 'petitioner') has filed the instant revision petition under Article 227 of the Constitution of India assailing order dated 24.07.2015 (Annexure P-3) passed by learned Civil Judge (Junior Division)-cum-JMIC Baba Bakala Sahib, thereby closing evidence of the petitioner by court order.

I have heard learned counsel for the petitioner and perused the case file.

Learned counsel for the petitioner contends that the counsel for the petitioner met with an accident on 11.05.2015 and due to this reason, he could not come present in the Court premises for a period of about 02 months and the cross examination which was pending before the learned trial Court could not be carried out for a

considerable period of time. Vide impugned order dated 24.07.2015, the trial Court closed the evidence of the petitioner and denied the petitioner for his cross examination

Learned counsel for the petitioner prays that only one more opportunity may be granted to the petitioner to lead his evidence at own responsibility, on payment of cost. Order 17 Rule 1 CPC reads as under:-

1. Court may grant time and adjourn hearing.-(1) The court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the Suit for reasons to be recorded in writing:

1. Provided that no such adjournment shall be granted more than three times to a party during hearing of the suit.

(2) Costs of adjournment—in every such case the court shall fix a day for the further hearing of the suit, and shall make such orders as to costs occasioned by the adjournment or such higher costs as the court deems fits:

Provided that,—

(a) when the hearing of the suit has commenced, it shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the court finds that, for the exceptional reasons to be recorded by it, the adjournment of the hearing beyond the following day is necessary,

(b) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party,

(C) the fact that the pleader of a party is engaged in another court, shall not be a ground for adjournment,

(d) where the illness of a pleader or his inability to conduct the case for any reason, other than his being engaged in another court, is put forward as a ground for adjournment, the court shall not grant the adjournment unless it is satisfied that the party applying for adjournment could not have engaged another pleader in time,

(e) where a witness is present in court but a party or his pleader is not present or the party or his pleader, though present in court, is not ready to examine or cross-examine the witness, the court may, if it thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination in chief or cross-examination of the witness, as the case may be, by the party or his pleader not present or not ready as aforesaid.

Although proviso to Order 17 Rule 1 of the Code of Procedure lays down that not more than three opportunities should be granted to a party to lead his evidence, yet the aforesaid rule of procedure cannot be said to be inflexible or mandatory. Rules of procedure are handmaids of justice and cannot be used to defeat the ends of justice.

Reference at this stage can be made to a judgment passed by this Court in a case of ***Puran Chand alias Raju vs. Gopal Krishan and others, 2010(2) RCR (Civil) 598*** wherein it has been held that the rule of procedure cannot be said to be inflexible or mandatory- Rules of procedure are handmaids of justice and cannot be used to thwart the ends of justice.

In the present case, this Court is of the view that the ends

of justice would be met if one more opportunity is granted to the petitioner to lead his evidence on payment of cost, because otherwise, the impugned order would be very harsh on the petitioner as it would be a case of no evidence led by the petitioner.

The present revision petition is disposed of without issuing notice to the respondents, so as to avoid further delay in the disposal of the suit and also to save respondents of the expenses, they may have to incur in engaging counsel for the instant revision petition, if notice of the same is issued to them.

In view of the aforesaid, the instant revision petition is allowed and the trial court is directed to grant only one more opportunity to the petitioner to lead his evidence at own responsibility i.e to cross examine P.W.1 Baljinder Singh and P.W.2 Balwant Singh, subject to payment of Rs.5,000/- as cost . The petitioner may take assistance of the Court to summon witnesses, but not more than one opportunity shall be granted to the petitioner, even on the ground of non-service of witnesses or any other for grant nonappearance of the witnesses inspite of service or for any other reason, whatsoever.

August 14, 2015
G Arora

(**RITU BAHRI**)
JUDGE