

CR No.5364 of 2014

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

**CR No.5364 of 2014
Date of decision:13.01.2015**

Balbir Sharma

...Petitioner

Versus

Anand and another

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Jatin Hans, Advocate,
for the petitioner.

Mr. Jagjit Beniwal, Advocate,
for the respondents.

Rakesh Kumar Jain, J.

The plaintiff-petitioner has challenged the order dated 08.07.2014 by which opportunity has been given to the respondents-defendants to conclude their evidence.

Counsel for the petitioner has submitted that the defendants have been given one more opportunity to conclude their entire evidence despite availing several opportunities including the last opportunities. He has also submitted that since there is no provision for re-opening of evidence or for re-calling of a witness for further examination and cross-examination, therefore, the impugned order is patently erroneous and is liable to be set aside.

I have heard learned counsel for the petitioner and perused the

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available record.

I have found from the record that on 21.05.2014, the following order was passed by the trial Court:-

“Today the case was fixed for Dws. One DW namely Ramesh Chander was present but could not be examined due to busy schedule of ld. Counsel for the plaintiff and the defendant. Hence, request for adjournment has been made from both sides. Perusal of case file reveals that already several effective opportunities are provided to both the sides for completion of defendant's evidence. Therefore, in the interest of justice one opportunity is hereby granted to both sides. Learned counsel for plaintiff and defendant are directed to present before the Court on 27.05.2014 at 9.00 am sharp and cross-examination of the witness must be started at least by 9.15 am. If any of the counsel fails to present before the Court as per the schedule provided above, he shall not be allowed to further adjourn the matter on one pretext or the other. The defendant is directed to present all his witnesses on the date fixed. Last date is provided in the interest of justice.”

Thereafter, on 07.07.2014, the following order was passed by the trial Court:-

“Today the case was fixed for defendant's evidene

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and last opportunity was provided to the defendants to conclude their evidence. Previous costs of Rs.1000/- deposited in DLSA, Bhiwani vide receipt no.110933. Receipt place on file. Two DWs namely DW7 Anand Godara and DW8 Rajender Aggarwal present and examined. After this the ld. Counsel for the defendants suffered a statement to the effect that Shri Anand Godara was appointed as LC in this case and he in his presence got some photographs of the disputed property which he presented with his report but today these photographs are not exhibited and marked as Mark 1 to 3. Hence, he stated that it is necessary to exhibit these photographs. Therefore, he prayed that one more opportunity be given to examine Shri Harish Tanwar, photographer to prove these photographs. Heard. Now to come up on 08-07-2014 for the pronouncement of order on the request of ld. counsel for the defendants to give one more adjournment for examination of Shri Harish Tanwar, photographer.”

Thereafter, the following impugned order was passed on 08.07.2014:-

“Today the case was fixed for pronouncement of order on the request of the ld. counsel for the defendants to give one more opportunity for defendant's evidence to

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examine Shri Harish Tanwar, photographer.

Keeping in view the genuine request of the ld. counsel for the defendants, one more opportunity is hereby given to the defendants to examine Shri Harish Tanwar for the only purpose of proving the photographs attached with the report of the local commissioner.

Accordingly, the case is adjourned for 28.07.2014 for examination of Shri Harish Tanwar. The defendants are directed to file the summons for the presence of this witness on the date fixed. If due to failure of the defendants, the summons will not be served on the witness, then no further adjournment shall be given for this purpose. Last date is extended in the interest of justice for the reasons as stated above. The defendants are further directed to adduce documentary evidence, if any, on the date fixed. After this, adjournment for adducing documentary evidence shall not be granted.

As a matter of fact, the trial Court adjourned the case on 07.07.2014 to the next date i.e. 08.07.2014 for the purpose of pronouncement of the order on the request of the defendants to allow them one more opportunity to examine Harish Tanwar, Photographer and on the said date when the impugned order was passed, one more opportunity was given to examine the photographer to prove the photographs. The order was passed because Shri Anand Godara was appointed as Local Commissioner

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and in his presence, some photographs of the disputed property were taken which he had produced with the report but the photographs were marked and not exhibited because the photographer was required to prove them. Only for that purposes, the photographer was allowed to prove the said photographs and no further opportunity is granted.

In view thereof, I do not find any error in the impugned order passed by the trial Court and hence, the present revision petition is hereby dismissed.

January 13, 2015
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(Rakesh Kumar Jain)
Judge