

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

CR No. 6171 of 2012 (O&M)

Date of decision : 28.7.2015

Sham Lal and others

... Petitioners

VS

Jasbir Singh and others

... Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Arun Jindal, Advocate, for the petitioners.
Mr. K.S. Bassi, Advocate for
Mr. Jasbir Singh, Advocate, for respondent no.1.

Rajesh Bindal, J.

Challenge in the present petition is to the order dated 23.7.2012 whereby the evidence of respondent no.1/plaintiff, was closed recording that the cross-examination by the defendants be treated as nil. The order dated 1.10.2012 dismissing the application filed by the petitioners/ LRs of deceased defendant no.1, for recalling the plaintiff witnesses for cross-examination has also been impugned.

Learned counsel for the petitioners submitted that respondent no.1 filed a suit for declaration claiming ownership of the property on 25.1.2005 in which the issues were framed on 18.1.2006. No doubt, the affidavit of the PWs were tendered by the plaintiff in the evidence and one of the witnesses was partly cross-examined, however, on many occasions, the PWs did not appear in Court, hence, counsel for the defendants could not cross-examine them. On the date when evidence of the plaintiff/respondent no.1 was closed recording cross-examination by the defendants as nil, counsel for the defendants was busy in another court and it was merely 12.30 PM when the order was passed. On the same day, an application was filed. However, the same has also been dismissed. The prayer is that in the interest of justice, one opportunity be granted to the petitioners for cross-examination of the witnesses produced by the plaintiff. In support of his plea, reliance was placed upon judgment of this Court in

Civil Revision No. 625 of 2014 A. K. Singla and others vs Tejinder Pal Bhalla decided on 29.1.2014.

On the other hand, learned counsel for respondent no.1/ plaintiff submitted that from the zimni orders passed by the learned Court below, it is evident that the petitioners/ defendants were granted eight effective opportunities to cross-examine the witnesses produced by the plaintiff but the same were not availed of. The examination-in-chief of PW Jasbir Singh was recorded on 6.5.2008 but he was partly cross-examined on some dates of hearing but despite appearing in Court on number of occasions he was not cross-examined on one excuse or the other. The object is to delay the proceedings. The evidence of the plaintiff started on 6.5.2008 and primarily for the reason that the defendants had failed to cross-examine the witnesses produced by the plaintiff, the evidence could not be concluded. Ultimately, while recording the cross-examination of the two witnesses produced by the plaintiff as nil, the evidence of the plaintiff was closed on 23.7.2012. Thereafter, the defendants had also concluded their evidence and the case is now fixed for arguments. While referring to judgment of Hon'ble the Supreme Court in M/s Shiv Cotex vs Tirgun Auto Plast Private Limited and others 2011(4) RCR(Civil) 807, the submission is that the petitioners being at fault even if it is to be attributed to the counsel, they are not entitled for cross-examination of the witnesses produced by the plaintiff. The order does not call for any interference by this Court.

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

Before considering the case of the parties on merit, it would be appropriate to refer the observations made by Hon'ble the Supreme Court in M/s Shiv Cotex' s case (supra), wherein it has been opined that adjournments have grown like cancer in the justice delivery system. With the amendment in CPC, the party is entitled to three adjournments for leading his evidence. No doubt, the provisions have been held to be directory, however, opportunity can be granted for the reasons to be recorded which have been enumerated. Absence of a lawyer or his non-availability on account of professional work in other Court or change of counsel, etc. have not been held to be good ground for justifying grant of more than three adjournments

for leading evidence. Past conduct of the parties is also an important circumstance while accepting request for adjournment. The parties to the suit cannot be given liberty to proceed with the trial at their leisure and pleasure. Relevant para of the judgment is extracted below:-

“16. No litigant has a right to abuse the procedure provided in the CPC. Adjournments have grown like cancer corroding the entire body of justice delivery system. It is true that cap on adjournments to a party during the hearing of the suit provided in proviso to Order XVII Rule 1 CPC is not mandatory and in a suitable case, on justifiable cause, the court may grant more than three adjournments to a party for its evidence but ordinarily the cap provided in the proviso to Order XVII Rule 1 CPC should be maintained. When we say 'justifiable cause' what we mean to say is, a cause which is not only 'sufficient cause' as contemplated in sub-rule (1) of Order XVII CPC but a cause which makes the request for adjournment by a party during the hearing of the suit beyond three adjournments unavoidable and sort of a compelling necessity like sudden illness of the litigant or the witness or the lawyer; death in the family of any one of them; natural calamity like floods, earthquake, etc. in the area where any of these persons reside; an accident involving the litigant or the witness or the lawyer on way to the court and such like cause. The list is only illustrative and not exhaustive. However, the absence of the lawyer or his non-availability because of professional work in other court or elsewhere or on the ground of strike call or the change of a lawyer or the continuous illness of the lawyer (the party whom he represents must then make alternative arrangement well in advance) or similar grounds will not justify more than three adjournments to a party during the hearing of the suit. The past conduct of a party in the

conduct of the proceedings is an important circumstance which the courts must keep in view whenever a request for adjournment is made. A party to the suit is not at liberty to proceed with the trial at its leisure and pleasure and has no right to determine when the evidence would be let in by it or the matter should be heard. The parties to a suit - whether plaintiff or defendant - must cooperate with the court in ensuring the effective work on the date of hearing for which the matter has been fixed. If they don't, they do so at their own peril. Insofar as present case is concerned, if the stakes were high, the plaintiff ought to have been more serious and vigilant in prosecuting the suit and producing its evidence. If despite three opportunities, no evidence was let in by the plaintiff, in our view, it deserved no sympathy in second appeal in exercise of power under Section 100 CPC. We find no justification at all for the High Court in upsetting the concurrent judgment of the courts below. The High Court was clearly in error in giving the plaintiff an opportunity to produce evidence when no justification for that course existed.”

If the facts of the case are considered in the light of the enunciation of law laid down by Hon'ble the Supreme Court, in my opinion, there is no error in the order passed by the learned Court below. The conduct of the petitioners will establish the fact that they are not entitled to any relief.

On 6.5.2008, after the issues were framed, the plaintiff filed his own affidavit in examination-in-chief as PW1. The case was adjourned to 23.5.2008 for his cross-examination. Thereafter, the case remained pending for certain miscellaneous purposes. On 5.6.2009, PW Jasbir Singh was present and partly cross-examined. On the next date of hearing i.e. 25.11.2009, PW Jasbir Singh was present but a request for adjournment was made by counsel for the defendants on the ground that he is busy in another Court. On 17.2.2010 also as Jasbir Singh was not cross-examined, he was

bound down for the next date of hearing. On 15.5.2010, he was again partly cross-examined. Thereafter, on one date of hearing, no PW was present, however, on the next date of hearing on account of transfer of the case file to another Court, no proceeding could take place. On 6.4.2011, the zimni order records that three PWs were present for their cross-examination, but case was adjourned on the request of counsel for the defendants. Thereafter, the case remained pending for some miscellaneous purposes and on five dates of hearing, no PW was present. On 21.7.2012, two PWs were present and their examination-in-chief was recorded, however, their cross-examination was deferred on the request of counsel for the defendants. On 23.7.2012, the zimni order records that two PWs Jasbir Singh and Joginder Singh were present, however, they were not cross-examined as counsel for the defendants was not available. It was under these circumstances that their cross-examination was recorded as nil and the evidence of the plaintiff was closed.

The aforesaid proceedings clearly established the conduct of the petitioners, who are LR's of deceased- defendant no.1, where they had not been able to cross-examine the witnesses of the plaintiff. No ground is made out to set aside the order and granting further opportunity to the petitioners to cross-examine the plaintiff's witnesses.

Accordingly, the present petition is dismissed.

28.7.2015
vs

(Rajesh Bindal)
Judge

(Refer to reporter)