

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 6559 of 2015
Date of Decision: October 5, 2015

Darshan Singh

..... Petitioner

Versus

Surain Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Rajeev Sharma, Advocate for
Mr. J. S. Dadwal, Advocate
for the petitioner.

Amit Rawal, J (Oral)

Learned counsel for the petitioner-plaintiff has impugned the order dated 16.9.2015 whereby his application for grant of opportunity to lead an evidence and recalling the order dated 16.7.2015 whereby evidence had been closed by order has been dismissed. The trial Court dismissed the application on the ground that numerous opportunities have been taken by the petitioner-plaintiff, the application for recalling of the order was filed on 27.7.2015 i.e. within eleven days. It has been categorically stated in the application that on few occasions the concerned Ahlmad did not issue the summons in respect of witnesses sought to be summoned, and on few dates the affidavit of the witnesses were already ready and notarized, but, the said witnesses were not examined by the concerned counsel.

It is a settled law that parties could not suffer for the lapse of the counsel as rendered in the judgment in **Rafiz and another Vs. Munshi Lal and another AIR 1981 SC 1400.**

I am of the view that the order dated 16.9.2015 dismissing the application and not recalling the order dated 16.7.2015 whereby evidence of the petitioner-plaintiff has been closed has rendered miscarriage of justice. The issues in the instant case were framed on 23.9.2014.

Learned counsel for the petitioner submits that the plaintiff has to examine three witnesses as per the provisions of Order 16 Rule 1-A CPC. Accordingly the impugned order dated 16.7.2015 whereby, evidence of the petitioner-plaintiff has been closed and the order dated 16.9.2015, whereby, the application for recalling the said order has been dismissed, are hereby, set aside. The petitioner-plaintiff is granted two effective opportunities to examine three witness i.e. two attesting witnesses of the agreement to sell as well as plaintiff subject to payment of costs of ₹5,000/-.

It is made clear that costs shall be condition precedent before availing the liberty as granted by this Court.

The civil revision stands disposed of.

(AMIT RAWAL)
JUDGE

October 5, 2015
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