

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

**CR No.7336 of 2015 (O&M)
Date of decision: 03.11.2015**

Pal Singh

...Petitioner

versus

Bhupinder Singh

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sudhir Paruthi, Advocate,
for the petitioner.

RITU BAHRI, J.

Challenge in this petition is to the order dated 16.02.2015 (Annexure P-1) passed by the Civil Judge (Junior Division), Jalandhar, whereby evidence of plaintiff-petitioner has been closed and order dated 06.10.2015 (Annexure P-2), whereby application filed by the petitioner for recalling of the order dated 16.02.2015, has been dismissed.

Plaintiff-petitioner filed a suit for possession by way of specific performance of agreement to sell dated 24.03.2005 entered into between the parties with regard to a shop measuring 1 Marla (property No. WH 101, Harnamdasspura, Tehsil and District Jalandhar). Issues in the suit were framed on 08.11.2010 and plaintiff-petitioner after availing a number of opportunities for a period of more than 3½ years, examined himself as PW-1. Thereafter, on 11.07.2014 and 30.07.2014, he was partly cross-examined. Vide order dated 04.02.2015, one last opportunity was granted to the plaintiff to conclude his evidence and the case was adjourned to 13.02.2015. On this date, he failed to examine any witness and even, did not bother to deposit

warrant fee. Again, the trial Court granted an opportunity to the plaintiff to lead evidence, but he failed to do so. Finally, vide order dated 16.02.2015, his evidence was closed by order. Thereafter, when the defendant had led his entire evidence, at the stage of rebuttal evidence, the present application was made for recalling of the order dated 16.02.2015, which was disposed of vide order dated 06.10.2015.

Learned counsel for the petitioner has referred to the judgment passed by a Co-ordinate Bench of this Court in Santosh Kumar Berry Vs. Nirmala Devi and others, 2013 (1) PLR 404, to contend that a petition for reopening the evidence should not normally be dismissed and subject to payment costs, an opportunity should be granted to conclude the evidence. In the above said judgment, the this Court has examined the provisions of Order 18 Rule 17 of the Code of Civil Procedure (for short 'CPC') and observed as under:-

“3. In this case, the Court did not employ appropriate resourceful approach. Suffice it to say to point out that if there ever be an occasion when the side is closed and a petition is filed for reopening the same, the Court shall not normally dismiss the petition but shall consider giving an opportunity subject to appropriate terms as to costs, except in extreme circumstances of manifest contumacious conduct or there is seen an attempt to harass the other side by deliberate delays. In Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate, 2009 (4) SCC 410, while examining Order 18 Rule 17 Civil Procedure Code the supreme Court held that the provision could be invoked only in a situation to enable the Court, while trying a suit to clarify any doubts which it may have with regard to the evidence led by the parties. The provisions were not to be used to fill up omissions in the evidence of a witness who has already been examined. This provision was again examined in a different situation, akin to the present situation in K.K. Velusmy v. N Palanisamy AIR (2011) SC (Civil) 1000. In the case before Supreme Court the application was moved after the conclusion of examination of witnesses and after the partial arguments were over. The Court held:

“(i) Court should award appropriate costs to the other party to

compensate for the delay.

(ii) If the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs.

(ii) If additional evidence was non genuine or relevant, exemplary costs be awarded apart from ordering prosecution, if it involves fabrication of evidence.....”

As per the above guidelines issued by the Hon'ble Supreme Court, the Court has to examine, whether reopening of the evidence, if found to be mischievous or frivolous, it could be rejected with heavy costs.

In the present case, after framing of issues on 08.11.2010, in a span of over three years, the plaintiff-petitioner examined himself and he was partly cross-examined on 11.07.2014 and 30.07.2014. Thereafter, he was granted two opportunities to conclude his evidence, which he did not utilize and even did not bother to file the warrant fee. After closure of evidence on 16.02.2015, he let the defendant-respondent to conclude his evidence and thereafter, file the present application. The attempt made by the plaintiff-petitioner was merely to delay the proceedings. By filing this application, he just wanted to fill up the lacunae after leading of evidence by the defendant.

After going through the impugned orders, no illegality, much less perversity, has been found therein warranting interference by this Court in exercise of its revisional jurisdiction.

Dismissed.

(RITU BAHRI)
JUDGE

03.11.2015

ajp