

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.7275 of 2013
Date of decision:11.02.2015

Davinder Kaur

....Petitioner

Versus

Gurmej Singh

.....Respondent

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.B.D.Sharma, Advocate, for the petitioner.

Mr.Veneet Sharma, Advocate, for the respondent.

G.S.Sandhawalia J.(Oral)

Challenge in the present revision petition is to the order dated 21.10.2013 (Annexure P2) whereby the Civil Judge (Jr.Divn.) Amritsar has closed the evidence of the plaintiff-petitioner on the ground that 21 effective opportunities had been availed and there was no justification for further extending the opportunity.

A perusal of the paperbook would go on to show that the parties are closely related to each other, being brother and sister. Challenge in the suit is to the transfer deed dated 27.12.2004, allegedly executed by the father of the petitioner.

Counsel for the petitioner points out that the issues were framed on 15.10.2012 and thereafter, on 06.12.2012, PW1 to PW3 had tendered their affidavits and their cross-examination was deferred at the request of counsel for the respondent-defendant. They had put in appearance on 04.01.2013, but defendant's counsel was not available and was proceeded against *ex parte*. Thereafter, the matter was sought to be compromised and various dates were taken for this purpose but compromise could not be effected, as noticed vide

Thereafter, an application was filed by the respondent under Order 9 Rule 7 CPC, for setting aside the *ex parte* proceedings which was allowed on 03.08.2013, subject to payment of ₹500/- as costs and the *ex parte* proceedings were set aside. The costs were paid on the next date, i.e., on 26.08.2013. Again an effort was made for compromise and the matter was sent to the Mediation Centre, Amritsar, which would be clear from the order dated 25.09.2013. Thereafter, the impugned order was passed.

Keeping in view the above cumulative history and the pendency of the case, it would be clear that the petitioner was not that much at fault, as has been held by the Trial Court. Efforts were made for compromise keeping in view the relationship of the parties and infact, the witnesses had not been cross-examined at the instance of the counsel for respondent-defendant. In such circumstances, the Trial Court was not justified in closing the defence of the plaintiff-petitioner as a valuable right of the plaintiff had been involved. It is settled principle that rules of procedures are handmaids of justice and not its mistress and cases should be decided on merits and not on technicalities. In such circumstances, the impugned order dated 21.10.2013 (Annexure P2) is not justified and the same is set aside. The plaintiff-petitioner will produce the said witness for cross-examination on the next date of hearing before the Court below and two effective opportunities shall be granted to complete the cross-examination.

With the abovesaid observations, the present revision petition stands allowed.

11.02.2015
sailesh

(G.S.SANDHAWALIA)
JUDGE