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

Civil Revision No.7837 of 2015

Date of Decision: 26.11.2015

Smt. Urmil Bhasin

.....Petitioner

vs

Ved Parkash Gauba

....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Gurmohan Singh Bedi, Advocate
for the petitioner.

Mr. Gurvinder Pal Singh, Advocate
for the respondent.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J.

[1]. Petitioner is defendant in the suit titled as Ved Parkash Gauba vs. Smt. Urmil Bhasin for specific performance of agreement to sell dated 25.08.2011, seeking direction to the defendant to obtain permission from Haryana Urban Development Authority (for short 'the HUDA') for transfer of the property and to obtain occupation certificate from the concerned Authority and also to get the sale deed executed in respect of suit land alongwith construction thereupon as shown in the plaint.

[2]. Defendant/petitioner has contested the suit thereby

alleging agreement to sell to be forged and fabricated document. The agreement to sell was not signed, nor any consideration was received by the defendant. The recited consideration is claimed to be very meager and is not in consonance with the actual value of the property in question. Transaction in question has been completely denied by the defendant/petitioner.

[3]. Issues were framed on 11.03.2014. Plaintiff examined his witnesses and evidence of the plaintiff was closed on 11.11.2014.

[4]. The evidence of the defendant started from 04.12.2014. On 04.12.2014, no DW was present and the case was adjourned for 18.12.2014 at own responsibility of the defendant. The order was repeated on 18.12.2014 to the same effect and the case was adjourned for 12.01.2015. On 12.01.2015 also, no DW was present. Last opportunity was granted to the defendant to adduce evidence at her own responsibility for 22.01.2015.

[5]. On the adjourned date i.e. 22.01.2015, defendant examined herself as DW-1. The cross-examination of the witness was deferred on the request of counsel for the plaintiff. The case was adjourned for 07.02.2015 for cross-examination of the DW-1 Smt. Urmil Bhasin and for remaining evidence of

the defendant at her own responsibility.

[6]. Since the Presiding Officer was on leave on 07.02.2015, therefore, case was taken up on 06.02.2015 and was further adjourned to 21.02.2015. On 21.02.2015, memo of appearance on behalf of defendant was filed. No DW was present and the case was further adjourned to 26.02.2015 for DWs at own responsibility of the defendant. Same order was repeated on 26.02.2015 and 17.03.2015 with recital of last opportunity.

[7]. Thereafter an application was filed by the defendant under Order 18 Rule 17 read with Section 151 of CPC, seeking directions to recall the plaintiff witnesses for the purposes of cross-examination/re-examination. Notice of this application was given and the case was adjourned to 04.04.2015 for filing reply to the application. The case was further adjourned to 20.04.2015 for consideration after filing reply to the application in question by the plaintiff.

[8]. On 20.04.2015, arguments were not advanced on the application and the case was further adjourned to 06.05.2015. Re-joinder was filed on 06.05.2015 and the case was adjourned to 07.07.2015 for consideration and for arguments on the application under Order 18 Rule 17 read with Section 151 of

CPC. The case was further adjourned to 18.08.2015 and thereafter on 15.09.2015 for arguments.

[9]. Application under Order 18 Rule 17 read with Section 151 of CPC was declined on 15.09.2015. Since the case was being adjourned for defendant evidence prior to filing of the aforesaid application, therefore, last opportunity was granted to the defendant to adduce evidence on 28.09.2015.

[10]. On 28.09.2015, no DW was present. Request for adjournment was made. The trial Court has observed “heard and allowed”. At the same time the trial Court further proceeded to record that it was the last opportunity for defendant evidence, therefore, evidence of the defendant was closed by the order of the Court and case was adjourned for rebuttal evidence and arguments.

[11]. In this revision order dated 15.09.2015 passed by the Civil Judge (Jr. Divn.), Gurgaon has not been assailed vide which application under Order 18 Rule 17 read with Section 151 of CPC was declined. The order dated 28.09.2015 has been assailed. The order is conflicting in nature inasmuch as that on the one hand request for adjournment was allowed at the instance of the defendant, but at the same time the evidence of the defendant was closed by order of the Court.

[12]. Perusal of the record shows that from the very first order i.e. 04.12.2014, defendant was asked to adduce evidence at her own responsibility without providing any process of the Court in summoning the witnesses of the defendant. The defendant examined herself as DW-1 in examination-in-chief on 22.01.2015 and the case was deferred for cross-examination of the defendant/DW-1 on the request of the learned counsel for the plaintiff.

[13]. Though the interlocutory orders on record reveal that sufficient number of opportunities were provided for defence evidence and the defendant could not lead the evidence, but one thing is apparent that defendant was never provided any process/assistance of the Court in summoning the witnesses for defence and on the very first day of adducing evidence, defendant was burdened to examine her witnesses on her own responsibility.

[14]. On 07.02.2015, the Presiding Officer was on leave and on two subsequent occasions defendant had to change the Lawyer in her best interest and on the adjourned date i.e. 19.03.2015, she filed application under Order 18 Rule 17 read with Section 151 of CPC and on this application, the process of the Court ultimately took seven adjournments upto 15.09.2015, when the said application was dismissed. Since the case was

adjourned for 28.09.2015, when the request of the defendant was allowed for adjournment, still the evidence has been closed by the order the Court. The case was further adjourned for rebuttal evidence and arguments.

[15]. I have considered the submissions made by learned counsel for the parties and have perused the relevant interlocutory orders placed on record by learned counsel for the caveator/respondent.

[16]. Since the case of the defendant is based upon alleged plea of fraud committed by the plaintiff and has not been allowed any assistance of the Court in summoning the witnesses from the very beginning. Cross-examination of DW-1, was deferred at the instance of the plaintiff and seven opportunities were consumed in deciding the application under Order 18 Rule 17 read with Section 151 of CPC, therefore, in considered opinion of this Court, one last opportunity is required to be given to the defendant in the interest of justice to adduce her entire evidence on her own responsibility without seeking any assistance of the trial Court in getting the witnesses summoned.

[17]. In view of aforesaid, this revision petition is allowed to the extent of granting one opportunity to the

defendant/petitioner.

[18]. Trial Court shall fix a date for the defendant evidence and it shall be responsibility of the defendant to adduce her evidence on that day at her own responsibility subject to payment of Rs.10,000/- as cost which shall be paid to the plaintiff in the trial Court on the date fixed. Payment of said cost would be the condition precedent for allowing such an opportunity.

[19]. With the aforesaid observation, this revision petition is disposed of.

November 26, 2015

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**(RAJ MOHAN SINGH)
JUDGE**