
IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No.7906 of 2014
Date of decision: 06.1.2015

Ashok Kumar

....Petitioner

Versus

Pawan Kumar and others

...Respondents

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

Present: Mr. H.K.Aurora, Advocate for the petitioner.

Mr. Ashok Aneja, Advocate for the respondents.

G.S.Sandhawalia J.(Oral)

1. Challenge in the present revision petition filed under Article 227 of the Constitution of India by the petitioner-plaintiff is to the order dated 7.10.2014 whereby the Additional Civil Judge (Senior Division), Jalandhar has closed the evidence of the plaintiff by order.

2. The reasoning given is that the issues were framed on 15.3.2013. The plaintiff had availed sufficient opportunities including last opportunity granted on 26.9.2013.

3. A perusal of the paper book would go on to show that the dispute is between the legal heirs of late Sudarshana Rani. The sale deed dated 24.6.1994 was the subject matter of consideration along with the will dated 25.11.2003 registered with the Sub Registrar, Jalandhar. A perusal of the zimini orders would go on to show that the issues were framed on 15.3.2013. The plaintiff was remiss in leading his evidence and on 7.10.2013 one Parveen Kumar, Clerk had come present but could not be examined. He was bound down for 31.10.2013 and the remaining plaintiff's witnesses were to be produced on the date fixed. On the said date, there was no work on the part of the Advocates due to which case was adjourned to 29.11.2013 and file was received by another Court on transfer. The petitioner was present and examined in chief

Pratibha Kaur Aurora
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Chandigarh

by way of affidavit and on request of respondents' counsel his cross examination was deferred. He was directed to be present on 12.3.2014 but he was not present on the said date and on 13.5.2014. Thereafter, on 20.8.2014 Joga Singh, Record Clerk, Sub Registrar, Jalandhar was present and examined. Thereafter, the impugned order was passed on 7.10.2014.

4. Counsel for the petitioner has, thus, submitted that his cross examination had been deferred at the request of counsel for the other side and on account of that he not being cross-examined, his evidence will not be taken into consideration. It is submitted that on account of non appearance the other side could be compensated by way of payment of heavy costs as the dispute is interse the family. The sequence of events and the facts have not been disputed as such by the counsel for the respondents.

5. Counsel for the petitioner has further pointed out that the steps were made to get record of the registered will by summoning necessary witnesses. In such circumstances, the case should be decided on merits after granting proper opportunities.

6. Accordingly, keeping in view the principle that rules of procedure are handmaids of justice and not its mistress, before passing an order of closing evidence, the petitioner should have been saddled with costs. The matter should be decided on merits and one party should not be benefited on account of lapse on the part of the other party. The suit was filed only on 22.2.2013 and it is not the case that the petitioner-plaintiff had delayed the proceedings and dragged the same for years. The trial Court should have imposed costs before shutting down the evidence which is normal practice to warn the parties. Accordingly, the present revision is allowed and the impugned order is quashed subject to payment of ₹ 10,000/- as costs which will be paid to the defendants.

7. The petitioner shall appear before the trial Court for his cross-examination on 15.1.2015 which is stated to be next date. The trial Court shall

also summon the necessary official witnesses and grant two effective opportunities to petitioner to conclude his evidence.

06.1.2015
Pka

(G.S.SANDHAWALIA)
JUDGE