

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No.884 of 2015
Date of decision: 09.02.2015

Raghunath and another

....Petitioners

Versus

Daljit Singh and others

...Respondents

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

Present: Mr. Maninder Arora, Advocate for the petitioners.

G.S.Sandhawalia J.(Oral)

Challenge in the present revision petition filed under Article 227 of the Constitution of India by plaintiffs No.2 and 3 is to the order dated 20.1.2015 whereby the evidence of the plaintiffs has been closed by order of the Court.

The reasoning given by the trial Court is that the issues were framed on 23.11.2009 and the plaintiffs have failed to conclude their entire evidence and case pertains to the year 2008 and thus there was no justification to give another opportunity. The said order on the face of the record does not show anything that the trial Court acted beyond its jurisdiction as apparently the plaintiffs have been negligent in conducting and prosecuting their case.

Counsel for the petitioner, however, submits that the suit pertains to the relief of specific performance on the strength of agreement dated 26.12.2005 and the petitioners have affixed Court fee to the tune of ₹ 6,48,400/-, therefore, they would be gravely prejudiced if they would not be allowed one last opportunity to lead their evidence. It is further submitted that the other side can be adequately compensated by payment of costs.

On perusal of the zimini orders after 29.9.2014 which have reproduced, it is clear that several last and final opportunities were given on various dates. The witnesses were examined and PW-2 Raghu Nath was cross-examined on 22.12.2014. The trial Court also adjourned the case for short

dates i.e. 5.1.2015 and 9.1.2015 after imposing costs of ₹ 500/-. On 16.1.2015 the affidavit of one witness was tendered into evidence. The case was adjourned to 20.1.2015 on which date the impugned order was passed after noticing that Neeraj Gupta had gone to Udaipur and he was unable to appear. Thus, evidence of Neeraj Gupta, if he is not cross-examined will remain incomplete.

Keeping in view the above facts and circumstances of this case, this Court is of the opinion that there is no requirement of issuing notice to the respondents as it will unnecessarily entail unnecessary expenses and delay the matter. However, it is open to the respondents to file an appropriate application for recalling of the order in case there is any concealment of fact.

After hearing counsel for the petitioners and considering the fact that the case pertains to a suit for specific performance and Court fee to the tune of ₹ 6,48,400/- has been paid and keeping in view of the facts and circumstances of this case and the principle that rules of procedure are handmaids of justice, this Court is of the opinion that one last opportunity should be granted to the plaintiffs to produce their entire evidence on the date fixed which is stated to be 12.2.2015 subject to payment of ₹ 10,000/- as costs.

Accordingly, the present revision petition is allowed and the impugned order dated 20.1.2015 is set aside. The trial Court shall grant an opportunity to plaintiffs to conclude their evidence on 12.2.2015 the date already fixed subject to payment of ₹ 10,000/- as costs. The above said witness will be produced for cross-examination and no further opportunity shall be given in case he does not put in appearance.

09.02.2015
Pka

(G.S.SANDHAWALIA)
JUDGE