

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No.996 of 2015
Date of decision: 13.02.2015

Paramjit Kaur and another

....Petitioners

Versus

Sangeeta and others

...Respondents

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

Present: Mr. N.S.Kandhola, Advocate for the petitioners.

G.S.Sandhawalia J.(Oral)

Challenge in the present revision petition filed under Article 227 of the Constitution of India is to the order dated 12.1.2015 (Annexure P/1) whereby the Civil Judge (Junior Division), Mohali has closed the evidence of the petitioners-defendants on account of the fact that the plaintiffs had closed their evidence on 14.7.2014 and thereafter case has remained pending for the evidence of the defendants. The trial Court also noticed that several opportunities including last opportunity had been granted to the petitioners-defendants and thus the impugned order was passed and the case was fixed for rebuttal evidence and arguments. Now the case is stated to pending for 18.2.2015.

Counsel for the petitioners submits that it is a case for partition and possession and only one witness has been cross-examined whereas DW 2 to DW 5 had tendered their affidavits but have not been cross-examined. He further submits that the case would be adversely affected in case evidence is not allowed to be brought on record.

After hearing the counsel for the petitioners, this Court is of the opinion that no fault can be found as such in the order of the trial Court since a perusal of zimini orders would go on to show that the evidence on behalf of the defendants' witnesses was tendered by way of affidavits but the said witnesses were never present on the subsequent dates for cross-examination. However,

keeping in view the fact that the suit is for partition and possession and the petitioners are defendants and only one DW has been examined and in view of the fact and circumstances of this case and the principle that rules of procedure are handmaids of justice, one effective opportunity should be granted to the petitioners-defendants to produce their evidence on the next date fixed before the trial Court i.e. 18.2.2015 for the purpose of cross-examination subject to payment of costs to compensate the plaintiffs for the delay which has been caused in the trial.

Accordingly, 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.

Thus, the present revision petition is allowed and the impugned order dated 12.1.2015 is set aside. The trial Court shall grant an opportunity to petitioners-defendants to conclude their evidence on 18.2.2015 the date already fixed subject to payment of ₹ 7500/- as costs which will be paid to the plaintiffs. It is made clear that petitioners-defendants shall produce their witnesses who have already submitted their affidavits at their own risk and responsibility on 18.2.2015 the date already fixed before the trial Court. Counsel for the plaintiffs shall cross-examine them on the said date. In case counsel for the plaintiffs takes another opportunity, the trial Court shall grant another opportunity and said witnesses shall again remain present. The above said witnesses will be produced for cross-examination and no further opportunity shall be given in case they do not put in appearance.

13.02.2015
Pka

(G.S.SANDHAWALIA)
JUDGE