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

**RSA No.4575 of 2010 (O&M)
Date of Decision: 22.09.2015**

M/s S.P. Timber Industries

....Appellant

Vs

Punjab & Sind Bank and another

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Anil Kshetarpal, Senior Advocate with
Mr. Saurabh Garg, Advocate
for the appellant.

Mr. Jaivir Yadav, Advocate
for the respondent No.2.

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]. Plaintiff is in second appeal against the judgment and decree dated 21.08.2010 passed by District Judge, Yamuna Nagar, whereby judgment and decree dated 05.11.2009 passed by Civil Judge (Jr. Divn.) Jagadhri have been upheld.

[2]. Plaintiff filed suit for declaration to the effect that property bearing *Khewat* No.218, *Khatauni* No.412, *Khasra* Nos.430 and 1069 total measuring 1 *Bigha* 3 *Biswas* having dimensions shown in the plaint is owned and possessed by the plaintiff-firm and is free from all incumbrances. Consequently relief for permanent injunction

has also been sought restraining the defendants from interfering in the ownership and possessory right of the plaintiff over the suit land.

[3]. Suit has been contested by the defendants on all customary pleas, besides alleging that properties of defendant No.2 were separate from the properties of the plaintiff. No occasion arises for any auction of the properties of the plaintiff. Properties of defendants No.1 are in the form of shops on the main road and a Saw mill with buildings and sheds behind the shops. The shops situated on the main road were rented out to the tenants and rent was being received by M/s Dasondha Singh Waryam Singh from the tenants. Factum of plaintiff being a firm and Kapil Chaudhary its partner is admitted.

[4]. Shorn of unnecessary details at this stage, it is relevant to state that issues were framed before the trial Court on 26.05.2009. Thereafter case was adjourned for 25.08.2009 for evidence of the plaintiff. Order dated 26.05.2009 is reproduced hereasunder:-

“Present: Shri Sanjeev Gupta, counsel for the petitioner/plaintiff.

Shri JS Anand, counsel for the respondent / defendant no.1.

Sh. Rohit Arya, counsel for the respondent/defendant no.2.

Written statement on behalf of defendant No.2 filed. Arguments heard; from the pleadings of the parties, the following issues are hereby framed:

1. Whether the plaintiff is entitled to the relief for

declaration as prayed for? OPP

2. *Whether plaintiff is entitled for the relief of permanent injunction as prayed for?OPP*
3. *Whether suit is not maintainable? OPD*
4. *Relief.*

No other issues have been pressed or claimed. Now to come up on 25.08.2009 for the evidence of the plaintiff. P.F., DM and list of witnesses be filed within 10 days failing which evidence shall be brought at own responsibility.

Sd/-CJJD/26.05.09”

[5]. On 25.08.2009, trial Court passed the following order:-

“Present: Counsel for the parties.

No PW is present. On the request of the counsel for the plaintiff, the case is adjourned to 15.10.09 for evidence of the plaintiff at own responsibility.

CJJD/25.08.09”

[6]. Since on 25.08.2009, no PW was present, case was adjourned for 15.10.2009 on the request of learned counsel for the plaintiff. On 15.10.2009, the trial Court passed the following order:-

“Present: Shri Sanjeev Gupta, counsel for the petitioner/plaintiff.

Shri JS Anand, counsel for the respondent/defendant no.1.

Sh. Rohit Arya, counsel for the respondent/defendant no.2.

No PW is present. On the request for the counsel

for the plaintiff, the case is adjourned to 05.11.2009 for evidence of the plaintiff at own responsibility. Last opportunity is granted.

Puneet Sehgal,
JM/C/15.10.09”

[7]. On 05.11.2009 i.e. the adjourned date, trial Court passed the following order:-

“Present: Shri Sanjeev Gupta, counsel for the petitioner/plaintiff.

Shri JS Anand, counsel for the respondent /defendant no.1.

Sh. Rohit Arya, counsel for the respondent/defendant no.2.

No PW is present. Adjournment is requested which is opposed on the ground of last opportunity. The plaintiff has failed to bring any evidence despite availing several opportunities including last opportunities. The plaintiff neither present in person for his evidence nor any witness has been summoned by the plaintiff; therefore, I do not find any ground to adjourn this case for evidence of plaintiff. Consequently, evidence of plaintiff is closed under Order 17 Rule 3 CPC. Ld. Counsel for the defendants have submitted that they will not lead any evidence on behalf of the defendants as there is no evidence of plaintiff on file.

Arguments head. Vide my separate judgment of even date, suit of the plaintiff is dismissed with no order as to costs. Decree sheet be prepared accordingly. File after needful be consigned to the record room.

Announced.
05.11.2009

Sd-/Civil Judge (Jr. Div)
Yamuna Nagar at Jagadhir.”

[8]. By closing of the evidence of the plaintiff by order of the Court under Order 17 Rule 3 CPC trial Court proceeded to dismiss

the suit forthwith vide judgment and decree dated 05.11.2009.

[9]. Feeling aggrieved against the aforesaid judgment and decree, plaintiff-appellant preferred first appeal before the lower appellate Court, which was also dismissed by the lower appellate Court vide judgment and decree dated 21.08.2010.

[10]. In the present appeal, appellant craves indulgence of this Court on the following substantial questions of law:-

- “(i) Whether trial court is expected to give proper opportunity to the plaintiff to lead his evidence?”*
- “(ii) Whether delay in appearance of defendant and filing of its written statement can visit the plaintiff with penal consequences?”*
- “(iii) Whether the provisions of CPC to grant three opportunities to lead evidence are mandatory?”*

[11]. After issuance of process by this Court, the service was complete as depicted in the order passed by this Court on 27.09.2011 and the case was adjourned for arguments.

[12]. Bare reading of substantial questions of law formulated by learned counsel for the appellant shows that the issue of proper opportunity in the context of provision in terms of Order 17 Rule 1 CPC has to be appreciated vis-a-vis the conduct of the plaintiff leading to closure of evidence on the alleged sufficiency of grounds for non-appearance or grounds leading to closure of evidence of the plaintiff.

[13]. Order 17 Rule 1 CPC provides for grant of time to the

parties from time to time during hearing of the suit and also provides that adjournment shall not be granted more than three times to a party during pendency of suit. Order 17(2)(b) provides that no adjournment shall be granted at the request of the parties except where circumstances are beyond the control of that party. It is further provided in Sub-Rule (c) of Order 17 CPC that engagement of the Advocate in another Court shall not be a ground for adjournment.

[14]. The scope of proviso to Order 17 Rule 1(1) CPC is that more than three adjournments shall not be granted. It has to be read in continuation with proviso to Order 17 Rule 1(2) and clauses mentioned thereunder from clauses (a) to (e).

[15]. Order 17 CPC does not forbid grant of adjournment where the circumstances are beyond the control of party. There may be some cases where party/counsel is sufficiently prevented from appearing in the case even after availing three adjournments. In a way existence of sufficiency of reasons for not appearing is an essential condition for treating the aforesaid provision to be directory.

[16]. The provision of cost in terms of Order 17(1)(2) CPC has been made because of the practice of having been developed to award only nominal cost even adjournment on payment of cost is granted. Ordinarily, where costs are awarded, the same should be realistic and corresponding to the intensity and should co-relate with the actual cost which had to be incurred by the opposite party in case of grant of adjournment beyond three opportunities.

[17]. The aforesaid proposition has been interpreted by the Hon'ble Apex Court in **Salem Advocate Bar Association T.N. vs. Union of India, (2005) 6 SCC 344**. The limitation of three adjournments would not apply where adjournment is to be granted on account of circumstances which are beyond control of the party. Even in cases which may not strictly come within the category of circumstances beyond control of the party, the Court by resorting to the provision of higher costs which can also include punitive costs in the discretion of the Court, adjournment beyond three times can be granted having regard to injustice that may result on such refusal with reference to facts of each case. Apparently, the provision in question has been held to be directory in nature, depending upon facts and circumstances of each case.

[18]. The sufficiency of cause for not adducing evidence by the plaintiff is pleaded to be the reason that its partner had to leave to Mumbai suddenly on account of illness of his brother-in-law. The aforesaid reason as projected by the plaintiff had no explanatory note because plea was not accepted and the Court proceeded to close the evidence under Order 17 Rule 3 CPC and decided the suit forthwith.

[19]. The lower appellate Court has admitted that it was the primary duty of the Court to get defendant No.2 served as soon as possible by resorting to all effective steps in law. Defendant No.2 could not be served for a long time. The suit was dismissed in

default and it took two years in restoration. The question arises whether this alleged latch or omission on the part of the plaintiff can be taken to be an additional reason for not granting opportunity beyond three adjournments? By not effecting service upon the defendant No.2 by the plaintiff has to be viewed in the context whether plaintiff would gain anything on account of no service upon the defendant No.2 within reasonable time?

Even the Court was equally empowered to proceed lawful in those circumstances.

[20]. The story of Kapil Chaudhary remained in Mumbai during the period when case was fixed for evidence has been negated by the Courts below in view of interlocutory orders dated 25.08.2009, 15.10.2009 and 05.11.2009 passed by the trial Court before closing evidence of the plaintiff.

[21]. There is no mention in the aforesaid orders with regard to presence of Kapil Chaudhary at Mumbai, no such definite conclusion can be drawn that Kapil Chaudhary was not at Mumbai but was in Yamuna Nagar without there being any further opportunity to prove this fact.

[22]. Without going further, at this stage since the provision is directory, the Court is empowered to consider the case even the same may not strictly come within the category of circumstances beyond the control of a party by resorting to provision of cost. The closure of evidence at such a juncture may result in injustice to the

plaintiff and for that respondents can be compensated with adequate punitive cost which in the discretion of this Court can be imposed upon the plaintiff.

[23]. Substantial question of law No.1 as framed by the appellant has to be answered that with the closure of the evidence under provision of Order 17 Rule 3 CPC, proper opportunity has been denied to the plaintiff in view of facts and circumstances of the case and the trial Court was not justified in closing the evidence of the plaintiff squarely on the basis of provision of Order 17 Rule 1 CPC which is discretionary in nature.

[24]. Question No.2 has to be answered by adverting to the facts that after dismissal of the suit in default, the period of two years was consumed in getting it restored. Factum of not effecting service upon defendant No.2 for a long time cannot be allowed to visit the plaintiff with penal consequences in terms of not granting adjournment beyond three adjournments in view of proviso to Order 17 Rule 1(1) CPC. Concept of sufficiency of cause and indulgence/discretion of the Court even in those circumstances where the case is not covered within the category of circumstances beyond control of a party, could have been resorted by the trial Court subject to payment of punitive cost to the defendants.

[25]. Question No.3 has been elaborately met by the judgment and decree of the Hon'ble Apex Court in **Salem Advocate Bar Association's** case (supra).

[26]. In view of aforesaid, this Court is of the considered view that one opportunity is legally required to be given to the plaintiff on its own responsibility to lead evidence subject to payment of Rs.20,000/- as cost which shall be paid to the respondent No.2. Payment of cost shall be the condition precedent for providing one opportunity to the plaintiff for leading evidence.

[27]. With the aforesaid observation the impugned judgments and decrees passed by both the Courts below are set aside. Appeal is allowed. Both the parties are directed to appear before the trial Court on 15.10.2015. On their appearance, trial Court shall fix one date for the evidence of the plaintiff on its own responsibility and thereafter shall proceed to decide the case on merits.

[28]. In the light of aforesaid observation, consequences to follow. Record of the Courts below be sent back forthwith.

September 22, 2015
Atik

(RAJ MOHAN SINGH)
JUDGE