

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3550 of 2012
Date of decision: 08.12.2015

Davinder Mohan

... Appellant

Versus

Mohinder Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Vipin Mahajan, Advocate for the appellant.

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?

ARUN PALLI J. (Oral)

Suit filed by the plaintiff was dismissed by the trial court vide judgment and decree dated 05.10.2009. Even an appeal preferred against the said decree failed and was dismissed vide judgment dated 04.05.2012. The reasons recorded by the first appellate court, in support of its judgment, read as thus:

“11. It may be added that issues were framed in the case on 12.04.2004, and perusal of the zimni orders show that plaintiff availed 19 effective opportunities to lead its evidence. Perusal of the zimni orders further show that Amardeep Singh, a clerk from P.S.E.B., appeared on three days but he did not bring the record and lastly appeared in the Court on 21.01.2008. But thereafter no step was taken by the plaintiff to summon the witness or

lead any other type of evidence, though availed eight effective opportunities to lead evidence.

12. Not only his, plaintiff was ordered to take dasti summons for 03.12.2008 vide order dated 30.09.2008. Perusal of the file do not show that any such step was taken by the plaintiff. Again plaintiff was granted last opportunity to lead its evidence vide order dated 22.07.2009 for 29.09.2009. Again on that day no PW was present and finding no justification for further adjournment, the learned lower Court closed the evidence of the plaintiff by order. Thus, it cannot be said that learned lower Court acted hastily and did not give proper opportunity to the plaintiff to lead evidence. It was plaintiff who was lacking in leading evidence and if he has summoned the witness who appeared at one or two time, the same do not exonerate the plaintiff not to make any effort for summoning the witnesses and lead evidence on the file.

13. Considering the fact that plaintiff has availed 19 effective opportunities, including last opportunity, no ground is made out to give any opportunity to the plaintiff to lead evidence and on that account to remand the case.”

Concededly, in a suit filed by the plaintiff-appellant, a decree for injunction, restraining the defendant from demolishing, altering and changing the structure of the building on the ground floor marked as ABEF, as also from interfering in his peaceful possession over a portion marked as GHKL, was prayed for. Issues were framed on 12.04.2004 and

the plaintiff was afforded 19 effective opportunities to lead his evidence. But as no evidence was led, the court was choice-less, but to dismiss the suit under Order 17 Rule 3 of the Code of Civil Procedure. A bare analysis of the records shows that the plaintiff has been negligent and remiss in pursuing his case. The suit was instituted on 04.12.2003. And, even post dismissal of the appeal, the matter in hand is pending for the past over three years and, thus, the very purpose and the cause of action to seek injunction has lost its significance. Once, even the plaintiff failed to appear as his own witness to substantiate his claim, the only and the inevitable conclusion that could be reached was to decline the injunction prayed for.

That being so, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed. No question of law, much less any substantial question of law, arises for consideration. Appeal being devoid of merit is accordingly dismissed.

December 8, 2015
Rajan

(Arun Palli)
Judge