

RSA No. 3688 of 2014 (O&M)

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

RSA No. 3688 of 2014 (O&M)

Date of Decision: October 19, 2015

Saurav Marwaha

...Appellant

Versus

Lashkar Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Rohit Ahuja, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (Oral):

CM No.13448-C of 2015

Prayer in this application is for taking on record the zimni orders passed by the trial Court after framing of issues, as Annexure A-4, in compliance with the order dated 21.05.2015 passed by this Court.

For the reasons mentioned in the application, the same is allowed. Zimni orders passed by the trial Court are taken on record.

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Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), Kapurthala, dated 16.07.2012, vide which, suit for permanent injunction restraining the respondent-defendant, his employees and agents/representatives from interfering into the peaceful possession of the

appellant-plaintiff illegally and forcibly over the shop situated in main bazar, Begowal, Tehsil Bholath, District Kapurthala, the site whereof has been detailed in the headnote, was dismissed because of lack of evidence as despite sufficient opportunities granted to the appellant-plaintiff to lead evidence in support of his claim, the same was not so done and, therefore, the evidence was closed by the order of the Court. Thereafter, appeal against the said judgment and decree stands dismissed by the Additional District Judge, Kapurthala, on 20.01.2014.

It is the contention of the learned counsel for the appellant that the learned Lower Appellate Court has wrongly recorded that five effective opportunities were given to the appellant-plaintiff to lead his evidence. He contends that actually, it would be four effective opportunities as on the first date, when the evidence was to be led i.e. 27.04.2011, the file was with the learned Appellate Court and, therefore, the same could not be taken to be an effective opportunity to the appellant-plaintiff for leading evidence. He, however, could not dispute the fact that on 06.09.2011, it would be the first date for leading the evidence but on the said date, no evidence of the appellant-plaintiff was present. The case was adjourned to 12.12.2011 with direction to conclude the entire evidence of plaintiff at own responsibility.

On 12.12.2011, following order was passed:-

“No plaintiff witness is present. Date is requested

and given undertaking by Ld. Counsel for the plaintiff to conclude the entire evidence of the plaintiff at own responsibility on the next date of hearing failing which it be taken as closed. Now to come up on 16.03.2012 as last and final opportunity to the plaintiff to conclude the evidence at own responsibility and to defendant to cross the witnesses, failing which cross examination shall be treated as nil.”

On 16.03.2012, again no plaintiff's witness was present and on the said date, following order was passed:-

“No plaintiff witness is present in spite of last and final opportunity in the light of written undertaking. Date is requested. Merely in the interests of justice plaintiff is hereby given 16.7.2012 as last and final opportunity to the plaintiff to conclude the evidence at own responsibility in the light of written undertaking already on record that too on payment of costs of Rs.1,000/- to be deposited in the Legal Aid Account and produced its receipt for the said date.”

After passing of the above order, the case was taken up for hearing on 16.07.2012, the date fixed. On the said date, no evidence of the plaintiff had come present nor were the costs paid. In these circumstances, the learned trial Court proceeded to close the evidence of the appellant-plaintiff and rightly so. That being the situation, the Court proceeded to dismiss the suit of the appellant-plaintiff under Order 17 Rule 3 of the CPC with costs. The order

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cannot be faulted with as four effective opportunities were given to the appellant-plaintiff. Even after the statement was given by the counsel for the appellant-plaintiff on two occasions and on the third, costs were imposed, the plaintiff failed to produce evidence. The assertion, thus, of the counsel for the appellant-plaintiff cannot be accepted.

At this stage, counsel for the appellant-plaintiff has referred to 'grounds of appeal' taken in the present case, to contend that the appellant-plaintiff was un-well and therefore, could not appear before the trial Court to lead his evidence.

This contention of the learned counsel for the appellant-plaintiff cannot be accepted as there is no medical evidence produced in support thereof. Further, this was not a ground taken before the Lower Appellate Court.

Learned counsel for the appellant-plaintiff has referred to the judgments passed by this Court in **Devender Sehdev versus Malkiat Singh, 2011 AIR CC 646, Vijay Kumar and another versus State of Haryana and others, 2014 (2) R.C.R. (Civil) 83** as also the judgment of the Karnataka High Court in **Afroz Banu (Smt.) versus Nandaram (deceased by L.Rs.) 2004 (3) R.C.R. (Civil) 327** in support of his contention that one more opportunity may be granted to lead his evidence as his right has been prejudiced.

I have gone through the judgments referred to above. The said judgments are distinguishable on facts. Those were the cases

where the Court found grave hardship and the Court took into consideration the same and passed the said orders. Present appears to be a case where there is intentional effort to delay the progress of the suit on the part of the plaintiff as he wanted to continue in the said shop in contravention of his undertaking given where he had himself signed an affidavit duly attested from the Executive Magistrate, Bholath, dated 04.03.2010, according to which, the shop was to be vacated by him within the fixed time of 10 months for which it was leased. The *bona fide* of the appellant-plaintiff, thus, are not above-board. The equity also cannot, therefore, be invoked in his support.

No substantial question of law arises in the present appeal which requires consideration of this Court. Therefore, finding no merit in the present appeal, the same stands dismissed.

October 19, 2015

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**