

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 2397 of 2016
Date of Decision: 4.4.2016

Balwinder Singh through Lrs.

---Petitioner

versus

Sukhwinder Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. K.R.Dhawan, Advocate
for the petitioner

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

Feeling aggrieved against the order dated 24.2.2016 (Annexure P-2) passed by the Additional Civil Judge (Senior Division), Khadoor Sahib, closing evidence of the petitioner/plaintiff (since deceased) represented by his legal representatives, the present petition has been preferred with a prayer for permitting the petitioner one effective opportunity for tendering the witnesses in the witness box for cross examination whose examination in chief by way of affidavits has already been recorded.

Counsel for the petitioner would contend that four witnesses tendered into evidence their affidavits by way of examination in chief in the year 2014 at Faridkot but later, case was transferred to a court at Khadoor

Sahib on the basis of a petition filed by respondent/defendant No. 2. It is further argued that as the witnesses were present at the time of their examination in chief recorded in the court, their cross examination was deferred at the instance of counsel representing the contesting party. On 24.2.2016, Jaipal Sharma PW2 was present in the court and his cross examination was concluded but simultaneously evidence of the petitioner has been closed by the order. It is argued with vehemence that in case the petitioner is not permitted to tender the remaining three witnesses in the witness box for their cross examination, their examination in chief would not be read into evidence and the petitioner would be deprived of an opportunity to prove his case in regard to his entitlement for specific performance of the agreement propounded by him, executed by Shukhwinder Singh defendant No. 1. Another submission made by counsel is that as the suit has been instituted by the plaintiff, he would not gain in any manner by delaying the proceedings, therefore, failure of the witnesses to appear in the witness box on 24.2.2016 should not be allowed to enure to the benefit of the respondents/defendants.

I have heard counsel for the petitioner, perused the records particularly the impugned order.

The evidence of the petitioner was closed by the order on 24.2.2016 and the case was adjourned to 2.3.2016 for evidence of the defendant. Another order dated 16.3.2016 passed by the court has been placed on record as Annexure P3 and perusal thereof would reveal that defendant No. 1 who was earlier proceeded against ex parte filed an application for setting aside ex parte proceedings that has been allowed and

he has been provided an opportunity to file the written statement for 21.3.2016. Counsel for the petitioner, in response to a query raised by the court would submit that subsequent to 24.2.2016, no evidence has been adduced by the defendant(s). The learned trial court has noticed that 14 effective opportunities have been afforded to the petitioner to conclude evidence including last opportunity but in view of the fact that three witnesses of the petitioner tendered into evidence their examination in chief but were not cross examined by the opposite counsel coupled with that rules of procedure should not stand in the way of substantial justice when examined in the light of facts and circumstances discussed hereinbefore, it is expedient in the interest of justice that the petitioner is allowed one effective opportunity to tender into witness box the witnesses already examined in chief so that their cross examination can be concluded by the contesting defendants.

Counsel for the petitioner has submitted that besides cross examination of the witnesses already examined in chief, the petitioner does not intend to examine any other witness in his evidence.

In view of what has been discussed hereinbefore, the petition stands disposed of in the aforesaid terms with the condition that the petitioner would get only one effective opportunity to produce the witnesses already examined in chief for the purpose of cross examination subject to payment of costs of Rs. 15.000/- by way of draft to Ms. Kulwinder Kaur, defendant No. 2.

(Rekha Mittal)
Judge

4.4.2016
PARAMJIT