

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

CR No.3544 of 2016

Date of decision :02.06.2016

Balkar Singh

..... Petitioner

Versus

Didar Singh

.....Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.B.D.Sharma, Advocate
for the petitioner.

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

DARSHAN SINGH, J. (Oral)

1. The present revision petition has been preferred against the order dated 29.02.2016, passed by the learned Civil Judge (Junior Division), Jalandhar, whereby the evidence of the petitioner-plaintiff has been closed by order.

2. Learned counsel for the petitioner contended that the petitioner is an old man of 80 years of age. He has filed the suit for specific performance of the contract. Earlier his suit was decreed *ex parte*. The said *ex parte* decree was set aside and the case was listed for evidence of the plaintiff on

23.01.2015. He contended that the petitioner has himself stepped into the witness box and has also examined the attesting witness of the agreement. Now, he wants to examine the scribe. The scribe of the agreement was a summoned witness. His diet money was deposited. But, he could not appear due to marriage of his son. Thus, he contended that the petitioner was not at fault. One opportunity may be granted to the petitioner to produce the evidence. No prejudice will be caused to the opposite party, rather the denial thereof will result in a serious prejudice to the rights of the petitioner. He contended that the Court is competent to grant the adequate opportunities in the interest of justice. He relied upon cases **Salem Advocate Bar Association, Tamil Nadu Vs. Union of India 2005(3) R.C.R (Civil) 530, Manohar Singh Vs. D.S.Sharma & Anr. 2009(4) R.C.R (Civil) 932, Paramjit Kaur and another Vs. Sukhraj Kaur and others 2014(3) PLR 629, Kulwinder Singh Vs. Balkar Singh and others 2014(3) PLR 590 and Mahant Jagmohan Singh Vs. Mahant Karamjit Singh 2013(4) R.C.R (Civil) 323.**

3. I have duly considered the aforesaid contentions.

4. The petitioner-plaintiff has filed the suit for possession by way of specific performance of agreement to sell dated 04.02.2010. The impugned order shows that the case was fixed for the evidence of plaintiff on 23.01.2015. After that the plaintiff has availed 15 effective opportunities to lead his

evidence. But, still he had failed to conclude the same. It is further mentioned in the impugned order that on some occasions even the costs were imposed. Learned counsel for the petitioner in the trial Court has also made the statement on 04.02.2016 that one opportunity may be granted to call the plaintiff and his witnesses for the purpose of cross-examination and the case was adjourned to 18.02.2016 by granting the last opportunity. But, even on that date, no evidence of the plaintiff-petitioner was present. It was stated before the learned trial Court that counsel for the plaintiff had gone for some urgent work and an adjournment was requested. The learned trial Court was gracious enough to accept the request, even though the counsel for the plaintiff has suffered the statement on the previous date that in case no evidence is brought on the next date, his evidence be closed by order. Thereafter, the case was adjourned to 19.02.2016 making it clear that that will be strictly the last opportunity failing which the evidence shall be deemed to have been closed. But again on 19.02.2016, the plaintiff did not produce the evidence. Learned trial Court again adjourned the case to 25.02.2016 on request. On that date, plaintiff come present and was examined. Again, the date was requested on the ground that the deed writer was busy due to marriage of his son. The case was adjourned to 29.02.2016 subject to Rs. 2000/- as costs. But, on 29.02.2016 also

plaintiff did not produce the witness nor paid the costs. So, his evidence was closed by the learned trial Court vide impugned order dated 29.02.2016.

5. The aforesaid sequence of event shows that the plaintiff-petitioner has availed 15 effective opportunities to conclude the evidence. The learned trial Court has even imposed costs upon the plaintiff-petitioner on certain dates just to awaken him, but that had no desired result. Even, the counsel for the petitioner has given undertaking before the learned trial Court that in case no evidence is brought, the evidence may be closed by order. Thus, more than sufficient opportunities were already granted by the learned trial Court to the petitioner.

6. There is no dispute with the proposition of law that the adjournments beyond three can be granted by the Court in order to meet the ends of the justice. But, at the same time there has to be some end to the proceedings those cannot be lingered on indefinitely due to inaction on the part of the litigating party. In case **M/s Shiv Cotex Vs. Tirgun Auto Plast P. Ltd. And others 2011(4) R.C.R (Civil) 807**, the Hon'ble Apex Court has laid down as under:-

“16. No litigant has a right to abuse the procedure provided in the CPC. Adjournments have grown like cancer corroding the entire body of justice delivery system. It is true that cap on adjournments to a party during the hearing of the suit provided in proviso to Order XVII Rule 1 CPC is not mandatory and in a suitable case, on justifiable cause, the

court may grant more than three adjournments to a party for its evidence but ordinarily the cap provided in the proviso to Order XVII Rule 1 CPC should be maintained. When we say 'justifiable cause' what we mean to say is, a cause which is not only 'sufficient cause' as contemplated in sub-rule (1) of Order XVII CPC but a cause which makes the request for adjournment by a party during the hearing of the suit beyond three adjournments unavoidable and sort of a compelling necessity like sudden illness of the litigant or the witness or the lawyer; death in the family of any one of them; natural calamity like floods, earthquake, etc. in the area where any of these persons reside; an accident involving the litigant or the witness or the lawyer on way to the court and such like cause. The list is only illustrative and not exhaustive. However, the absence of the lawyer or his non-availability because of professional work in other court or elsewhere or on the ground of strike call or the change of a lawyer or the continuous illness of the lawyer (the party whom he represents must then make alternative arrangement well in advance) or similar grounds will not justify more than three adjournments to a party during the hearing of the suit. The past conduct of a party in the conduct of the proceedings is an important circumstance which the courts must keep in view whenever a request for adjournment is made. A party to the suit is not at liberty to proceed with the trial at its leisure and pleasure and has no right to determine when the evidence would be let in by it or the matter should be heard. The parties to a suit - whether plaintiff or defendant - must cooperate with the court in ensuring the effective work on the date of hearing for which the matter has been fixed. If they don't, they do so at their own peril."

7. In that case, the plaintiff did not lead evidence despite three opportunities. His evidence was closed and the suit was dismissed. The Hon'ble Apex Court held that if the plaintiff did not lead evidence despite three opportunities, he

does not deserve any sympathy. The case in hand is even on better footing as in this case not only three but the petitioner had already availed 15 effective opportunities to produce the evidence and the learned counsel for the petitioner in the trial Court has even made the statement before the Court that if no evidence is brought on the next date of hearing, the evidence may be closed by order.

8. Thus, in these circumstances, the learned trial Court has not committed any illegality in closing the evidence of the petitioner-plaintiff who has already availed 15 sufficient opportunities.

9. Consequently, the present revision petition having no merits, is hereby dismissed.

02.06.2016

S.khan

(DARSHAN SINGH)
JUDGE