

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

**CR No.4777 of 2016
Date of Decision: 19.08.2016**

Savitri Devi

.....Petitioner

Vs

Satya Devi and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. P.K. Chugh, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed order dated 29.01.2016 passed by Civil Judge (Junior Division), Dera Bassi whereby evidence of the plaintiff was closed by order of the Court and order dated 30.05.2016 passed by Civil Judge (Junior Division), Dera Bassi refusing to recall the order dated 29.01.2016.

[2]. On 29.01.2016, the evidence of the plaintiff was closed with the observation that no PW was present despite sufficient opportunities having been availed by the plaintiff. The evidence was closed by order of the Court.

[3]. Learned counsel for the petitioner by referring to number of interlocutory orders contends that in the facts and

circumstances of the case, one more opportunity can be given to the petitioner to conclude her evidence. Perusal of interlocutory orders from time to time would reveal that on number of occasions, plaintiff's witness was not present despite imposition of costs. Plaintiff-petitioner has already availed 20 effective opportunities for concluding her evidence despite that she could not conclude her evidence.

[4]. Issues were framed in the suit on 16.05.2013 and thereafter, plaintiff appointed her son Faqir Chand as her General Power of Attorney. Faqir Chand tendered his affidavit on 05.09.2013 and the case was adjourned for his cross examination. Manpreet Singh, Office, Kanungo was examined as PW2. Plaintiff-petitioner suffered with Paralytic attack and remained confined to bed. Her son Faqir Chand was pursuing the litigation and they could not arrange the remaining witnesses in time because of her illness.

[6]. Petitioner alleged that now she has been recovered and wants to lead evidence. She herself wants to be examined. Earlier her son appeared as General Power of Attorney and was cross examined also. Plaintiff-petitioner had already been examined through her General Power of Attorney on 05.09.2013. The objections raised by defendants No.1 and 2 at that stage for cross examination of the plaintiff was not

entertained on the ground that plaintiff-petitioner had ensured them that they will not examine any other witness and only General Power of Attorney would suffice to depose on behalf of the plaintiff-petitioner. The cross examination of General Power of Attorney was conducted thereafter. General Power of Attorney is none- else but the son of plaintiff who has deposed on Oath to the entire satisfaction of the plaintiff. There was no such allegation that the General Power of Attorney has misconducted himself or has acted against the interest of the plaintiff.

[7]. Plaintiff-petitioner could not lead any medical evidence to show that she herself could not step into the witness box on account of medical ground or being confined to bed on account of Paralytic attack. Since the son of the plaintiff-petitioner Faqir Chand who was her General Power of Attorney was effectively cross examined at length by the defendants and sufficient opportunities ranging in 20 dates were granted to the plaintiff for her evidence and case remained fixed for plaintiff's evidence for more than 2 and half years. The evidence of the plaintiff was closed only on 29.01.2016. After examination of the witnesses i.e. General Power of Attorney and PW-2 Manpreet Singh, examination of the plaintiff herself would not satisfy the requirement of Order 18 Rule 3-A CPC as she would be in a

position to fill up lacuna in her case. No satisfaction of the Court can be recorded for granting leave on that premise as witnesses stood examined and cross examined before making such a prayer for examination of the plaintiff in person.

[8]. Taking into consideration facts and circumstances of the case, this Court does not intend to interfere in well reasoned order of the trial Court in not recalling the order dated 29.01.2016. Consequently, this revision petition is dismissed.

19.08.2016

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**(RAJ MOHAN SINGH)
JUDGE**

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No