

Civil Revision No.4973 of 2016

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In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.4973 of 2016

Date of Decision: 5.8.2016

Banwari

--- Petitioner

versus

Ram Niwas

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Gourav Jain, Advocate for the petitioner

Rekha Mittal, J.

The present petition has been directed against order dated 25.7.2016 (Annexure P-14) passed by the Civil Judge (Senior Division), Fatehabad whereby evidence of the petitioner has been closed by court order.

Counsel for the petitioner has submitted that on 16.4.2014, an application was filed to call upon Sandeep Kumar son of Mange Ram to give his specimen signatures and specimen writing for comparison by an handwriting expert. The said application remained pending till examination

of Sandeep Kumar on 12.5.2016, whose presence was secured by the court through bailable warrants. Sandeep Kumar was examined as a witness on 12.5.2016 and the case was adjourned for remaining evidence of the plaintiff. It is further argued that after obtaining specimen writing of Sandeep Kumar in Hindi and his specimen signatures, the petitioner availed of the services of Sh. Shamsher Singh Malik, Finger Print and Handwriting Expert. An affidavit alongwith the report prepared by the expert was placed on record on 18.7.2016 and the case was adjourned to 25.7.2016. As the witness Sh. Shamsher Singh Malik was not available on 18.7.2016 and 25.7.2016, he could not appear in the witness box for his examination resulting in closing of evidence of the petitioner/plaintiff. It is further submitted that the petitioner deposited Rs. 10,000/- as costs imposed by order dated 18.7.2016 and he is ready to pay further costs for delay, if any, attributable to the petitioner.

I have heard counsel for the petitioner, perused the paper book particularly the various zimni orders recorded by the court below.

Sandeep Kumar, PW was examined on 12.5.2016 after his presence was secured through bailable warrants. His specimen signatures and handwriting were made available on that very day. The case was

adjourned to 31.5.2016 for remaining evidence of the petitioner/plaintiff. It appears that the petitioner did not adduce any evidence on that day and the case was adjourned to 18.7.2016 on which date, the witness Sh. Shamsheer Singh Malik was stated to be not available. The trial court despite the fact that the petitioner had already availed 21 opportunities still adjourned the case subject to payment of costs of Rs. 10,000/ with a clear stipulation that it shall be the last opportunity and no further opportunity for this purpose will be granted. On 25.7.2016, the witness was again not present before the Court.

There is no explanation for his failure to appear in the court on three consecutive dates. A relevant extract from order dated 25.7.2016, reads as follows:-

“Cost paid. Receipt placed on file. No PW is present. Counsel for plaintiff submits that PW Shamsheer Singh Malik, Finger Prints and Handwriting expert is not present today and seeks adjournment, which is strongly opposed by learned counsel for defendants. Heard. Perusal of file reveals that today is 22th opportunity including last opportunity for plaintiff's evidence. Although only three opportunities are admissible for this purpose as provided under Code of Civil Procedure. So these opportunities already speak volumes about the time given to

plaintiff. Moreover, it is one of the targeted case under Action Plan 2016-17. So, no further opportunity is justified. Evidence of the plaintiff is closed by court orders.

Now, the case is adjourned to 2.8.2016 for defendant evidence at own responsibility.”

As per the provision in the Code of Civil Procedure, a party is entitled to three opportunities in all for adducing evidence. No doubt, the said provision is not mandatory but in the instant case, the petitioner availed of 22 opportunities for adducing evidence and three opportunities for examining an expert alone. In the given scenario, I do not find any error much less illegality in the order closing evidence of the petitioner. That being so, there is no question of providing another opportunity to the petitioner/plaintiff to adduce evidence.

Dismissed.

(Rekha Mittal)
Judge

5.8.2016
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes