

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

**CR No.5553 of 2016
Date of Decision: 30.08.2016**

Jai Singh**Petitioner**

Versus

Sukhdev Singh and others**Respondents**

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

Present: Mr. Atul Gaur, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed order dated 14.07.2016 passed by Additional Civil Judge (Senior Division), Kalka and order dated 06.08.2016 passed by the same Court whereby evidence of the plaintiff was closed by order of the Court and the application for recalling of order dated 14.07.2016 was also dismissed by the Court.

[2]. The evidence of the plaintiff was closed after providing number of opportunities to adduce evidence. In the application for recalling the order dated 14.07.2016, it was submitted by the petitioner that the plaintiff could not appear in Court on 14.07.2016 as he was suffering from fever and thereafter, Court has closed the evidence by order. Plaintiff could not be cross

examined due to non-availability of the respondents on earlier stages.

[3]. On the other hand, respondents submitted before the trial Court that despite availing 20 opportunities in all, the plaintiff did not step into witness box for his cross examination. In the application for recalling, a pretext was made that the plaintiff was ailing on the said date, but no such request was made by learned counsel for the plaintiff when order dated 14.07.2016 was passed. The pretext was found to be an afterthought. Even no medical evidence was adduced by the petitioner to show that he was suffering from fever on 14.07.2016.

[4]. The perusal of narration of facts given in respect of different dates on which case was processed would reveal that in as many as 20 opportunities were available before the plaintiff to go ahead with his required evidence. On 06.04.2015, plaintiff filed his affidavit and he could not be cross examined on the request of the defendant counsel. Thereafter, number of opportunities were availed by the plaintiff, but he did not offer himself to be cross examined by the defendants.

[5]. Though interlocutory orders passed by the Court from time to time have not been made available on record, but the narration of these orders as given in the grounds of revision

would reveal that the issues were framed on 05.05.2014 and thereafter, plaintiff was to provide the list of witnesses and to deposit the diet money of plaintiff's witnesses within stipulated period. The case was adjourned for 18.08.2014 for plaintiff's evidence. The case was taken up on 16.08.2014 as 18.08.2014 was declared as holiday and thereafter, it was adjourned to 10.11.2014 for plaintiff's evidence. Plaintiff could not lead evidence from 10.11.2014 to 15.12.2014 and from 15.12.2014 to 09.03.2015, from 09.03.2015 the case was adjourned to 06.04.2015 on the request of plaintiff's counsel.

[6]. On 06.04.2015, three plaintiff's witnesses submitted their affidavits on record and they could not be cross examined as defendant No.1 was not prepared to cross examine the witnesses and matter was adjourned to 20.05.2015. The witnesses namely Gurmukh Singh, Gurmeet Singh and Jai Singh were bound down for the adjourned date. Thereafter, the case was adjourned for six times. On 09.12.2015, plaintiff again made a request for adjournment and the same was allowed subject to payment of cost of Rs.500/-. The case was adjourned for 15.12.2015 and last opportunity was granted to the plaintiff to lead evidence.

[7]. The case was further adjourned for 05.01.2016 on the request of plaintiff. On said day, the plaintiff filed an application

under Order 26 Rule 9 CPC for appointment of Local Commissioner. On that premise, the case was further adjourned to 11.01.2016 and the application for appointment of Local Commissioner was ultimately dismissed on 31.05.2016. Even despite dismissal of application for Local Commissioner, the case was adjourned to 08.07.2016 for plaintiff evidence and again, it was adjourned for 14.07.2016. On 14.07.2016, impugned order came to be passed.

[8]. The perusal of these facts would show that the plaintiff was casual in his approach to conclude evidence despite availing number of opportunities at his instance. Though procedural law is handmaid, but indulgence cannot be given to such party whose action is not found to be bona fide.

[9]. In view of aforesaid facts, this Court is not inclined to show any indulgence in favour of the plaintiff. Impugned orders dated 14.07.2016 and 16.08.2016 are not found to be suffering from any jurisdictional error. The same are hereby upheld. Consequently, this revision petition is dismissed.

30.08.2016

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**(RAJ MOHAN SINGH)
JUDGE**

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No