

CR-5370-2014

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

CR-5370-2014

Date of Decision: 01.03.2016

Sukhdev Singh

... Petitioner(s)

Versus

Thakurdwara Baharala, Tapa and others

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

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

Present: Mr. Tribhawan Singla, Advocate,
for the petitioner.

Mr. Mayank Mathur, Advocate,
for respondent Nos.1 to 3.

Paramjeet Singh Dhaliwal, J. (Oral)

Instant civil revision has been filed under Article 227 of the Constitution of India for setting aside the order dated 22.08.2013 (Annexure P-1) passed by learned Additional Civil Judge (Sr. Divn.), Barnala whereby evidence of the petitioner-defendant No.2 has been closed by Court order and the order dated 22.07.2014 (Annexure P-8) passed by learned Additional Civil Judge (Sr. Divn.), Barnala whereby application moved by the petitioner for recalling the order dated 22.08.2013 has been dismissed.

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In brief, the facts relevant for disposal of the present revision are to the effect that respondent Nos.1 to 3-plaintiffs filed a suit for declaration on the ground that registered lease deed dated 31.08.1970 and 30.06.1975 qua the property of Thakur Dwara, plaintiff No.1, are illegal, null and void as the same was executed without any legal necessity. Upon notice, the petitioner-defendant No.2 filed written statement. On the basis of pleadings of parties, issues were framed. The plaintiffs have already concluded their evidence. On 22.08.2013, when the case was fixed for evidence of the defendants, they could not lead any evidence despite last opportunity and their evidence was closed by the trial Court. On 18.11.2013, when the petitioner came to know about the closure of evidence by the trial Court, he moved an application for recalling the order dated 22.08.2013 which has been dismissed vide impugned order dated 22.07.2014 (Annexure P-8). Hence, this civil revision.

I have heard learned counsel for the parties and perused the record.

By filing the instant revision, the petitioner seeks one effective opportunity to lead his evidence. It is correct that proviso to Order 17 Rule 1 CPC lays down that not more than three adjournments shall be granted to a party for its evidence. However, the said provision being rule of procedure has to be held to be directory and not mandatory in nature. This provision has to be applied with some flexibility and not

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with rigidity or inflexibility. Rules of procedure are handmaid to the administration of justice and are meant to meet the ends of justice and not to thwart or obstruct the same. In *Salem Advocate Bar Association, Tamil Nadu vs. Union of India AIR 2005 Supreme Court 3353*, it has been held by the Hon'ble Supreme Court that in the facts and circumstances of a given case, more than three adjournments can be granted for evidence of a party by imposing punitive cost. In the present case, this Court is of the considered opinion that ends of justice would be met if one effective opportunity is given to the petitioner-defendant No.2 for concluding his entire evidence, at his own risk and responsibility, subject to costs of ₹5,000/-, to be deposited with the District Legal Services Authority, Barnala. However, one effective opportunity shall also be given to the plaintiffs i.e. respondent Nos.1 to 3 to rebut the evidence. Since the opportunity to lead evidence has been given, the impugned order dated 22.07.2014 (Annexure P-8) is also required to be set aside.

For the reasons stated above, the impugned orders dated 22.08.2013 (Annexure P-1) and 22.07.2014 (Annexure P-8) are set aside.

The revision petition is disposed of in the aforementioned terms.

01.03.2016

parveen kumar

(Paramjeet Singh Dhaliwal)
Judge