

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

CR No.5955 of 2014

Date of Decision-04.10.2016

Rakesh Prashar and another ... Petitioners

Versus

Smt. Usha Prashar and others ... Respondents

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

Present: Mr. Vishal Aggarwal, Advocate for the petitioners.

Mr. R.S. Bains, Advocate for respondents No.1 and 2.

RAJ MOHAN SINGH, J.

[1]. Petitioners have challenged order dated 24.07.2014 passed by Civil Judge (Senior Division), Chandigarh vide which application filed by the petitioners to appoint Local Commissioner at their expenses to cross examine Raghbir Singh, witness to Will at Patiala was dismissed and evidence of the defendants-petitioners was closed.

[2]. Petitioners alleged that Raghbir Singh was sought to be examined by Local Commissioner at their own expenses as he was 74 years of age and was witness to Will. The witness was in advance stage of his life and he had tendered his affidavit in evidence on 31.05.2014. On the request of learned counsel for the plaintiff, the case was adjourned to 04.06.2014. However, another order was passed on 31.05.2014 changing the date from 04.06.2014 to 04.07.2014. On 04.07.2014, the witness could not

come present for the evidence being ailing. The matter was adjourned to 19.07.2014.

[3]. Since witness had not recovered from his ailment, an application was moved on 19.07.2014 on behalf of petitioners with a request to appoint Local Commissioner to record cross examination of witness Raghbir Singh as per provisions of Order 18 CPC. Petitioners showed their willingness to bear the expenses of the Local Commissioner.

[4]. The said application was opposed by the plaintiffs on the premise that the defence evidence was deemed to be closed in the event of non appearance by the defendants' evidence. No medical evidence was adduced by the defendants-petitioners. Witness had not come present in Court on previous dates also. The health of the witness was claimed to be good health who was capable of traveling 72 Kms from Patiala to Chandigarh. It was pleaded by the defendants-petitioners that the process of the Court cannot be utilized to collect evidence for either of the parties.

[5]. Suit for declaration was filed by the plaintiffs to the effect that they were owners in possession of Booth No.3025-D, Sector-22-D, Chandigarh. Declaration was also sought in respect of Will dated 04.10.1994 claiming the same to be forged and fabricated document as the same had seen the light of day after 9 years. Consequent mutation entered and sanctioned in favour of defendants No.1 and 2 by defendant No.3 on the basis of aforesaid

Will dated 04.10.1994 was also claimed to be illegal, null and void. Restraint was sought against defendants No.1 and 2 from receiving any rent and alienating the same in any manner or creating any encumbrance over the suit property. The application was filed under Order 18 CPC for cross examination of witness Raghbir Singh whose testimony was claimed to be vital to the litigation.

[6]. Trial Court dismissed the application vide order dated 24.07.2014 on the ground that interlocutory orders on record revealed that number of opportunities were availed by the defendants to lead evidence. The application was filed only to delay the proceedings and was the result of blatant misuse of process of law.

[7]. I have heard learned counsel for the parties and also perused the material on record.

[8]. Bare perusal of the impugned order would reveal that the trial Court has noticed that Raghbir Singh came present in Court on 31.05.2014 and tendered his affidavit in evidence. Thereafter, the case was fixed for 04.07.2014, 19.07.2014 and 24.07.2014. The witness did not come present on any of these dates. Application was not supported by any medical evidence showing ailment of the witness to the extent of such degree as would prevent him from appearing in the Court. Order dated 04.07.2014 would further reveal that defendant was informed that he had already availed number of opportunities for his evidence.

Case was adjourned only on his request. Last opportunity was given to him for concluding his entire evidence with a stipulation that in case he failed to conclude his entire evidence on the date fixed, the evidence would be deemed to be closed by order of the Court. The case was accordingly fixed for 19.07.2014.

[9]. On 19.07.2014, after examination of one witness, the counsel for the defendant moved the application in question at 4.00 p.m despite the fact that he was already told that he was required to produce his entire evidence on the date fixed. Trial Court also noticed the conduct of counsel for the defendant in the order dated 19.07.2014 wherein it was recorded that the case was fixed for cross examination of Raghbir Singh. One witness was present in the Court and the opposite counsel was also present. Presiding Officer asked the learned counsel for the plaintiff to cross examine the witness, but the witness refused for being cross examined and stated that he will examine himself in the presence of his counsel i.e. Mr. Anuj Raura. But after that neither the witness, nor his counsel turned up in the Court whereas counsel for the plaintiff remained present in the Court throughout since 10:00 a.m. At 2:00 p.m, the witness came present and the Presiding Officer asked him to be cross examined, but the witness again refused and requested that he will be cross examined only in the presence of his counsel.

[10]. Trial Court further noticed that on previous date of hearing also witness did not come for his examination and learned

counsel for the defendant requested for adjournment. The case was adjourned on his request. Interlocutory orders passed on record were perused and trial Court observed that 19.07.2014 was the last opportunity for defence evidence in view of the fact that defendant had already availed several opportunities to lead his evidence. There was specific observation that in case defendant fails to lead evidence, the same will be closed by order of the Court. At 2.45 p.m, learned counsel for the defendant did not turn up in the Court. Learned counsel for the plaintiff was still present in the Court. Owing to the conduct of the defendant, the Court thought it not appropriate to accommodate the request of the defendant as he was found playing hide and seek with the Court. The case was again taken up on 3.15 p.m and thereafter, the impugned order was passed.

[11]. Learned counsel for the petitioners vehemently submitted that keeping in view the age and disability related to age, one last opportunity be granted to the petitioner to lead his evidence. Since he was to be examined on commission, therefore, no prejudice will be caused to the plaintiff.

[12]. On the other hand, learned counsel for the respondents vehemently opposed the prayer of the petitioners by filing reply to the civil revision. Learned counsel for the respondents highlighted numerous instances on record with reference to dates and events

to contend that the conduct of the defendants was not above board and they played hide and seek with the plaintiffs and Court.

[13]. Learned counsel for the respondents contended that Satkam Prasher was admitted in Escort's Hospital at New Delhi for heart surgery on 07.09.1991. He was discharged from Hospital on 26.09.1991. Due to his ill health, he divided his commercial properties between his three sons in November 1993. Rakesh Prashar one of the son was asked to prepare necessary documents as his elder son Pawan had independent possession of one shop and his two other sons had 50% share in shop No.28, Sector-22-D, Chandigarh. Third Shop No.3025-D, Sector 22-D was on rent. Rakesh Prashar had agreed to transfer his 50% share of shop No.28 in the name of his younger brother Dinesh provided he transfers the rented shop i.e. shop No.3025-D, Sector 22-D, Chandigarh.

[14]. Learned counsel for the respondents also highlighted number of facts in his written statement to contend that notice was issued to the defendants on 01.10.2005. Defendants filed written statement on the fifth date of hearing. Written statement on behalf of defendant No.3 was filed on 14th date of hearing i.e. on 23.11.2006. On 16th date, the issues were framed. Defendants consumed 14 adjournments for filing the written statement. After filing the written statement, the evidence of the plaintiffs started w.e.f 09.04.2007. During the period of plaintiffs' evidence,

defendants remained adamant not to cross examine the plaintiffs' witnesses. Cost was imposed on the defendants for not cross examining. It was so recorded in the order dated 14.09.2014. Cross examination of PW 1 was completed on 16.07.2008. PW 2 tendered his affidavit on 11.09.2008. The cross examination of PW 2 was completed over a period of 3 years and 4 months i.e from 11.09.2008 till 07.01.2012. The affidavit was tendered on 28th date of hearing and the same was completed on 49th date of hearing.

[15]. Learned counsel further submitted that there were number of dates on which PW 2 Renu was present and she had signed the order sheet and yet it was recorded that no PW was present. On 24.10.2009, it was recorded that PW Renu was not present, though on the side of the order sheet signature of PW Renu was visible. Same was the position on 12.03.2010 and 28.11.2011.

[16]. Learned counsel also emphasized that defendants No.1 and 2 filed numerous applications and sought time for arguments. On three occasions, costs were imposed i.e on 14.09.2007, 22.01.2009 and 14.05.2010. Even the defendants moved an application for transfer of civil suit on 26.03.2012. Thereafter, the same was withdrawn after availing three opportunities on 18.07.2012. Thereafter, an application for secondary evidence was moved on 14.05.2013. The matter remained pending for consideration till 01.05.2014. Thereafter, it was decided. In the

intervening period, defendants did not appear. They were proceeded against ex parte. An application for restoration was filed and that also delayed the proceedings. Plaintiff in all fairness did not object to the restoration of the status of defendants. Defendants were granted first opportunity for leading evidence on 02.05.2013 i.e. 64th date of hearing. Evidence of the defendants was closed on 24.07.2014 i.e on 98th date of hearing.

[17]. Learned counsel again submitted that firstly the conduct of the defendants was delaying the disposal of the suit by not cross examining PW 1 and PW 2 for such a long period. The cross examination of these two witnesses took 4 years and 6 months. Thereafter, from 02.05.2013 till 24.07.2014, a period of more than one year was consumed for tendering only one witness namely Rakesh Prasher who was to be cross examined within one day after he refused to be cross examined at least on 2 dates when the counsel for the plaintiffs had to wait whole day. The witness did not cooperate even though he was present in the Court. In view of observations made by the trial Court in the order dated 19.07.2014, learned counsel contended that the petitioners do not deserve any indulgence at the hands of this Court.

[18]. Both the learned counsel tried to argue the case on merits, but the Court finds itself within the scope of the present revision petition. The facts were noticed only for the sake of

disposal of this revision petition in order to extract true picture on record.

[19]. From perusal of various interlocutory orders made available by learned counsel for the respondents, I find that the conduct of the petitioners was not appropriate to grant indulgence in the present revision petition. Defendants-petitioners have already availed numerous opportunities. Firstly, they did not cross examine PW 1 and PW 2 even for more than four years. Secondly, they consumed number of opportunities even for leading their evidence. In the intervening period, number of events had also taken place including filing of numerous applications.

[20]. Be that as it may, without addressing the said aspect, I find that the impugned order has been lawfully passed in view of facts and circumstances on record. There is no error of jurisdiction committed by the trial Court in passing the impugned order dated 24.07.2014. This revision petition is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

04.10.2016

Prince

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No