

Date of decision:4.10.2016

VERSUS

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Counsel for the petitioner would submit that Dalbara Singh-respondent has filed a suit for possession by way of specific performance of agreement to sell dated 08.09.2005 purported to be executed by the defendant (since deceased) in his favour. The suit was instituted in the year 2009 and the issues were framed in the year 2015. After evidence of the respondent/plaintiff was closed on 18.03.2016, the case was posted for evidence of the petitioner/defendant. Anil Sharma (DW-1) was examined-in-chief on 04.07.2016 but his cross examination was deferred to 08.07.2016. Later, Inderjit Singh (DW-2) was examined in chief on 20.07.2016 and his cross examination was deferred to 29.07.2016. Cross examination of Inderjit Singh was again deferred on 06.08.2016 and was eventually completed on 10.08.2016. Cross examination of Anil Sharma (DW-1) was concluded on 16.08.2016 and the case was adjourned to

23.08.2016. It is argued that as members of the Bar were abstaining from work on 23/24.08.2016, the remaining witnesses could not be examined. It is further submitted that in case the petitioner is not allowed to adduce remaining evidence, it may cause serious prejudice to her in controverting the evidence adduced by the respondent/plaintiff and to substantiate her plea that she never executed an agreement to sell and there was money transaction between the parties. It is argued that the petitioner has already prepared affidavits of Saroop Singh and Surinder Kaur (Annexures P-4 and P-5, respectively) and they are the only witnesses to be examined, in case one opportunity is provided to the petitioner to conclude her evidence on the date already fixed before the trial Court i.e. 06.10.2016.

I have heard counsel for the petitioner, perused the paper-book particularly various zimini orders reproduced in the grounds of revision.

The submissions made by counsel for the petitioners with regard to deferring of cross examination of witnesses of the defendant namely Anil Sharma and Inderjit Singh, already examined, is clearly borne out from the records. DW-2 Inderjit Singh was examined-in-chief on 20.07.2016 and his cross examination was deferred twice and was eventually completed on 10.08.2016. Cross examination of Anil Sharma (DW-1) was completed on 16.08.2016. The petitioner has placed on record document Annexure P-3 with regard to decision of members of the Bar to abstain from work. No doubt, any such decision by the Bar cannot justify absence of counsel for the parties from the Court or seek adjournment of the case but at the same time, in the given facts and circumstances that the petitioner has already examined two witnesses whose cross examination was deferred on certain occasions coupled with

the fact that a fair opportunity must be given to each of the parties to prove its case in accordance with law, it would be in the interest of justice if the petitioner is provided one effective opportunity to examine Saroop Singh and Surinder Kaur but subject to the following conditions:-

1. The petitioner shall be liable to deposit cost of Rs.10,000/-, with the trial Court payable to the contesting party, as per rules.
2. The petitioner shall supply copies of the affidavits of Saroop Singh and Surinder Kaur well in advance to counsel opposite before 06.10.2016.
3. The petitioner shall ensure presence of the witnesses before the Court on the date fixed i.e. 06.10.2016.

On failure of the petitioner to comply with any of the aforesaid conditions, the petition shall be deemed to be dismissed.

The petition stands disposed of in the aforesaid terms.

Before parting with this order, it is clarified that the petition has been disposed of without notice to the respondent (plaintiff) in order to save him from unnecessary expense and inconvenience. However, the respondent would be at liberty to file an appropriate application in case he has any grievance to express.

A copy of this order be given under the signatures of Reader of this Court.

OCTOBER 4, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no