

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

CR No.6651 of 2016(O&M)

Date of decision:8.11.2016

Ramesh Singh

....Petitioner

VERSUS

Mangh Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. A.K. Sama, Advocate for the petitioner.

REKHA MITTAL, J. (Oral)

The present petition directs challenge against orders dated 12.07.2016 (Annexure P-1) closing evidence of the petitioner and dated 09.09.2016 dismissing application of the petitioner for recalling the order dated 12.07.2016.

Counsel for the petitioner has submitted that no doubt, the defendants availed number of opportunities including the last opportunity for adducing evidence but the petitioner would suffer irreparable loss in case he is not permitted to tender himself in the witness-box for his examination in order to rebut the evidence adduced by the contesting party (plaintiff). It is further submitted that on 12.07.2016, the present petitioner was very much present in the Court premises, got prepared his affidavit to be tendered in examination in chief but unfortunately as his counsel was busy in another Court and clerk of counsel had to leave to meet an emergency owing to death in his family, the petitioner could not tender himself in the witness box in the forenoon session whereas in the afternoon

session, the Court was not working due to monthly meeting at the headquarters. It is further submitted that since closing of evidence of the petitioner on 12.07.2016, there is no progress in the proceedings as the respondent/plaintiff has not adduced any evidence in rebuttal and the case is now fixed for 15.11.2016. It is prayed that the petitioner may be allowed one opportunity to examine himself and tender documents in accordance with law, may be subject to terms and conditions ascertained by this Court.

I have heard counsel for the petitioner, perused the impugned order closing evidence and dismissing application for recalling the order dated 12.07.2016.

A plain and careful reading of the operative para of order dated 09.09.2016 would indicate that the Court has not doubted correctness of plea of the petitioner that he was present in the Court premises on 12.07.2016 but since his counsel was busy in some other Court, he could not tender himself in the witness box. It is also borne out from the order that on that day, the Court was not working in the afternoon session due to monthly meeting at the District Headquarters. This apart, a party must get fair opportunity to adduce evidence in the best interest of justice. In the given facts and circumstances, in my considered opinion, it would be fair if the petitioner is given one opportunity to examine himself and tender documents in accordance with law on the date already fixed before the trial Court i.e. 15.11.2016 but subject to the following conditions:-

- 1) A copy of affidavit to be tendered in examination in chief by the petitioner shall be supplied to counsel opposite two days in advance of the date fixed.

- 2) The petitioner shall be liable to pay costs of Rs.7,000/- to be deposited with the trial Court well before the date fixed and the same shall be released in favour of the respondents/plaintiffs in equal share.
- 3) The question of admissibility, relevance and mode of proof of documents to be tendered, is left to be decided by the trial Court.
- 4) The petitioner shall ensure his presence before the Court on 15.11.2016 for completion of his examination and cross examination.

Failure of the petitioner to comply with any of the aforesaid conditions would entail deemed dismissal of the petition.

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.

NOVEMBER 8, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no