

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

CR No.7175 of 2016

Decided on: 25.10.2016

M/s. Khemka Charitable Trust

....Petitioner

Versus

Bharat Dass (deceased) Chela Ram Dass through LRs and another

....Respondent

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Ajay Singh Ghangas, Advocate
for the petitioner.

REKHA MITTAL, J. (Oral)

By invoking Article 227 of the Constitution of India, the present petition directs challenge against order dated 02.09.2016 (Annexure P-2) passed by the Civil Judge (Jr. Division), Faridabad whereby evidence of the petitioner was closed by Court order.

Counsel for the petitioner would contend that the petitioner has filed a suit for permanent/mandatory injunction against the respondents/defendants pending since 2011. It is further submitted that though the case was adjourned on a number of occasions for adducing evidence by the petitioner but on 01.08.2016, one of the witnesses namely Rajeev Khemka tendered into evidence his affidavit by way of examination-in-chief and his cross-examination was deferred on the request of counsel opposite for 24.08.2016. It is further submitted that had Sh. Rajeev Khemka been cross-examined by counsel opposite on the day he tendered into evidence his affidavit by way of examination-in-chief, his testimony would have been completed. Another submission made by counsel is that in case Rajeev Khemka is not allowed to tender

himself into the witness-box for his cross-examination, his statement may not be read into evidence and the case would be rendered a case of no evidence resulting in serious consequence for the petitioner. It is argued that the petitioner may be allowed one effective opportunity for cross-examination of Rajeev Khemka and examination a witness from the office of Haryana Urban Development Authority, Faridabad (in short 'HUDA') and the petitioner would ensure presence of Rajeev Khemka and the witness from the office of HUDA along with relevant record on the date to be fixed by the trial Court.

I have heard counsel for the petitioner, perused the paperbook and the various zimini orders reproduced in the grounds of revision.

The issues in the case were framed on 22.07.2015 and the case was adjourned to 17.08.2015 for evidence of the plaintiff for the first time. The case was adjourned on a large number of occasions but the petitioner/plaintiff did not adduce any evidence till 01.08.2016, the day, one of the witnesses tendered into evidence his affidavit by way of examination-in-chief. The said witness also did not turn up on 24.08.2016 and 02.09.2016 for his cross-examination. However, it remains a fact that examination of PW1 could not be completed on 01.08.2016 as his cross-examination was deferred at the request of counsel opposite. Keeping in view the fact that cross-examination of the witness was deferred at the request of counsel opposite coupled with the fact that non-completion of examination of the witness would be of serious consequence for the petitioner, the petitioner is provided with one opportunity for completion of cross-examination of Sh. Rajeev

Khemka on the date already fixed i.e. 26.10.2016 subject to payment of costs of Rs.10,000/- to be deposited with the trial Court and the same shall be released in favour of the respondents/defendants in equal share. The petitioner shall also be entitled to tender into evidence the documents, if any, in accordance with law.

So far as the plea of the petitioner to examine a witness from the office of HUDA, till date, the petitioner has not furnished any list of witnesses much less summoning any person through process of the Court. Nothing has been mentioned in the petition justifying an opportunity for examination of that witness. Hence, prayer of the petitioner for examining a witness from the office of HUDA is rejected.

Before parting with this order, it is pertinent to mention that the petition has been disposed of without notice to the respondents in order to avoid un-necessary inconvenience and expenses. However, the respondents shall be at liberty to file an appropriate application in case they have any grievance to express.

Disposed of.

A copy of this order be given to counsel for the petitioner under the signatures of Bench Secretary.

25.10.2016

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(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No