

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3079 of 2010
DATE OF DECISION: October 24,2016

Pankaj and others

...Appellants

versus

Inder Singh Kataria and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.V.K.Jindal, Senior Advocate with
Mr.Amardeep Sheoran, Advocate for the
appellants.
Mr.B.S.Rana, Senior Advocate with
Mr.Ajay Ghangas and Rajinder Paul, Advocates
for respondent No.1.

AMIT RAWAL, J.

The appellants-plaintiffs are aggrieved of the
impugned judgments and decree of the Courts below whereby
invoking the provisions of Section 35-B and under Order 17 Rule
3 CPC, the civil suit has been dismissed.

Mr.V.K.Jindal, learned senior counsel assisted by
Mr.Amardeep Sheoran, Advocate appearing for the appellants
submits that their clients are willing to lead evidence subject to
any terms and conditions which this Court may deem
appropriate.

Mr.B.S.Rana, learned senior counsel assisted by Mr.Ajay Ghangas, Advocate appearing for respondent No.1 submits that the appellants-plaintiffs did not lead evidence despite availing of numerous opportunities granted by the Court below. Even the evidence was also closed by the Court orders which has not been assailed and the suit is of the year 2007, whereas, the judgment has been passed in 2009.

In rebuttal, Mr.Jindal submits that all the interim orders merge into the decree and in view of such position that there is no need to challenge the orders separately and, therefore, provision of the Order 43 Rule 1-A CPC would not apply.

I have heard the learned counsel for the parties and am of the view that the learned First Appellate Court should have remanded back the matter to the trial Court by affording reasonable opportunity to lead the evidence, through imposition of certain terms and conditions, much less, costs.

Accordingly, the present appeal is allowed. The judgments and decree of both the Courts below are set aside. Now the trial Court shall proceed with the suit on following terms and conditions:

- (a) The trial Court shall afford three effective opportunities to each of the parties to lead the evidence, in accordance with law.
- (b) The appellants shall make every possible endeavour to lead the evidence within the stipulated time bound period and in case, they fail to do so, the trial Court would be at liberty to pass any order, in accordance with law. This aforementioned condition would apply to the respondents also.

Since the respondents have been dragged into Court unnecessarily, therefore, the appellants should be saddled with reasonable costs. The costs are quantified at Rs.10,000/-, to be paid to the respondents, which shall be a condition precedent for proceeding further in the matter.

Needless to say that in case the appellants fail to make the payment of costs to the respondents, then the present appeal shall be deemed to have been dismissed.

The trial Court shall make every possible efforts to conclude the proceedings in the civil suit, as expeditiously as possible and not beyond one year.

The parties through their counsel are directed to appear before the trial Court on 1.12.2016.

Records of the Courts below, if any, be sent back.

Disposed of.

October 24,2016
KD

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No