

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

CR No.1047 of 2017

Date of decision: 16.02.2017

Ashok Kumar

..Petitioner

Versus

Gurinder Singh and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Maninder Arora, Advocate
for the petitioner.

Daya Chaudhary, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 06.01.2017 (Annexure P-1) passed by Civil Judge (Junior Division), Rajpura, whereby, the evidence of the petitioner-defendant was closed.

Briefly, the facts of the case as made out in the present revision petition are that plaintiff-respondent No.1 filed a suit for specific performance of agreement dated 16.10.2008 against the petitioner-defendant. Vide order dated 06.01.2017, the evidence of the petitioner-defendant was closed by order on the ground that he assured presence of both the witnesses before the trial Court but they were not present. It is also mentioned that the petitioner-defendant could not bring on record the entire evidence despite sufficient opportunities granted to him. Impugned order dated 06.01.2017 is subject matter of challenge in the present revision petition.

Learned counsel for the petitioner submits that the petitioner was attending the Court proceedings before the trial Court while appearing as well as by leading evidence. The case was fixed for evidence of defendant-petitioner and petitioner himself was present. His evidence was closed on the ground that other witness was not present. Learned counsel further submits that the trial Court has failed to appreciate the fact that the petitioner requested the trial Court to cross-examine the witness DW4 and by the end of cross-examination of DW4, second witness DW5 could have appeared but the trial Court insisted on the presence of both the witnesses at a particular time. At the end, learned counsel for the petitioner submits that witnesses DW4 and DW5 have already been examined and even partly cross-examined. Only further cross-examination remains to be conducted and he would be able to cross-examine both the witnesses in a single effective opportunity.

During hearing of arguments of learned counsel for the petitioner, Mr. Sherry K. Singla, Advocate, appears on behalf of respondent No.1 and has brought to the notice of the Court all the *zimni* orders to show that ample opportunities were granted to the petitioner but he could not produce both the witnesses. Learned counsel for respondent No.1 also submits that in spite of having many opportunities, the entire evidence of defendant-petitioner could not be completed and there was no reason to delay the case further. The evidence of defendant-petitioner was rightly closed by the Court order.

Heard arguments of learned counsel for the parties and have also perused the impugned order as well as other documents available on

the file.

The facts relating to filing of suit by respondent No.1 and closure of evidence of the defendant-petitioner are not disputed.

It is a settled proposition of law that scope of exercise of judicial discretion to achieve the ends of justice, in furtherance to the provisions of Code of Civil Procedure is the basic question, which deserves consideration in the present case. A limited prayer has been made by learned counsel for the petitioner, while challenging impugned order dated 06.01.2017 that the petitioner be granted one effective opportunity to cross-examine DW4 and DW5. On perusal of impugned order as well as the *zimni* orders produced by learned counsel for respondent No.1, it appears that ample opportunities have been given to the petitioner but DW4 and DW5 could not be examined/cross-examined. No doubt speedy trial is fundamental right of the litigants and no ground is made out to linger on the case for evidence of defence and ultimately, the evidence of the petitioner-defendant was closed by Court order.

This Court has discretion/inherent power, which can be used as an instrument by allowing the petitioner to give one more opportunity to conclude his evidence within a shortest time and by compensating the party opposite.

In the impugned order, nothing has been mentioned as to whether the cost was imposed upon the petitioner for not producing his evidence on various dates. The trial Court could have cautioned the petitioner-defendant by giving last opportunity or by imposing costs but no such efforts were made.

In case ***Joginder Singh and others vs. Smt. Manjit Kaur, 2000***

(2) ***RCR (Civil) 382***, this Court has observed as under:-

“3. Should such discretion by the Court can ever be termed as "uncontrolled and un-guided exercise of judicial discretion by the Court? "I have no hesitation in answering the above question in the negative. Certainly, it is not possible for the Court to provide the panacea to all problems arising at different stages of the suit. The Code of Civil Procedure is a comprehensive code and the different stages of a suit are controlled and regulated by various checks and limitations provided in the Code. The pious wish of the legislation for expeditious disposal of the suit runs like a golden thread in the various provisions of the Code. The inherent powers vested in the Court under section 151 of the C.P.C. are of very wide magnitude, but are certainly controlled by self restraints and restrict exercise of such powers depending on merit of each case. The Court is under an implied obligation to balance the equities between the parties to a suit to achieve the ends of justice, which is the basic paramount object of the Code. The equities would demand that power under the provisions of the Code or the inherent powers should be exercised by the Court to correct

imbalances or inequities resulting from unnecessary adjournments, between the parties. As a result of fault of one party to the suit, the other is certainly put to inconvenience or unnecessary harassment. Delay in conclusion, of "proceedings again is a factor of vital importance, as such, uncontrolled opportunity to a party to conclude its evidence in any number of opportunities would certainly prejudice the interest of the other party to the suit, who is exposed to prolong litigation and expense. Thus, there has to be a stage when the Court must decline to grant further opportunity to the defaulting party to conclude its evidence."

Similar view has been taken by this Court ***Kamla Devi and others vs. State of Haryana*** in another judgment in the case of **C.M. No. 2726-CI of 1993 in RFA No. 459 of 1988**, decided on **17.12.1998**, which is as under:-

"Inherent powers cannot be used as an instrument to intrude the powers of the Court in regard to a procedure or a remedy, if specifically provided in other provisions of the Code. No code or law could be codified so as to provide for each and every situation, at every stage of the proceedings arising from the vacuum left in the enactment. Such situations are to be supplied by the Court by

recourse to inherent powers to create a bridge over such situation for meeting the ends of justice or prevent abuse of process of law. To do justice is the primary duty of the Court but duty imposed should be discharged in consonance with the provisions of the Code and within four corners of well enunciated principle, inherent powers being adjunct to the specifically provided powers of the Code as codified in the code. Thus they could not be used for disturbing the procedure provided under the Code because its ramification could prove retrograde to the administration of justice by Civil Court. Entertainment of such application would have the effect of infringing the concept of finality non-doctrine of civil jurisprudence.”

As per provisions of Orders 16 and 18 CPC, the intention of Legislature is to fairly conclude the evidence of the parties without unreasonably compromising the expeditious disposal of the suit. The Court may grant further time to the party to commence the evidence. In case of default, the Legislature has given specific powers to the Court under Order 17 Rule 3 of the Code for disposal of the suit or to proceed with the suit as the Court may deem fit and proper. These powers vested in the Court cannot be rendered ineffective or meaningless by granting indefinite adjournments for leading evidence by a party. Such approach is bound to decimate the very purpose of the Code i.e. to achieve the ends of justice

and deliver expeditious decision in the cases. Accordingly, such provisions can neither be rendered ineffective nor taken to nadir so as to render provisions of Code as trivial.

The procedural law is enacted with the object of doing substantial justice between the parties. Its purpose is to determine the dispute between the parties and provide finality to such determination. The intention is also to prevent multiplicity or frivolous litigation to achieve the object of the golden thread underlying the entire procedure prescribed under the Code. However, it is for the Court to determine, while exercising its discretion uniformly, by creating balance between the parties but such discretion is to be controlled by settled preposition of law keeping in view the facts and circumstances of each case.

Similar observation has been made by Hon'ble the Apex Court in case *State of Punjab and another vs. Shamlal Murari and another, 1976 AIR (Supreme Court) 1177*.

No doubt, the petitioner was granted opportunities but he could not adduce his evidence. There is nothing on record to show as to whether the cost was imposed for not producing his evidence from time to time. Court would have cautioned the petitioner that in case the evidence was not produced, the same would be closed. The order closing the evidence of a party has got far reaching consequences. The main object of the Court is to do substantial justice. The procedural wrangles cannot be allowed to stay in the way of grant of substantial justice.

In the present case, sufficient opportunity was granted but still petitioner could not adduce his evidence within those available

opportunities. A procedural rule has to be liberally construed and care must be taken so that the technicality may not hamper in the administration of justice. To do justice, sometimes technicalities are to be ignored. If the breach can be corrected, without injury to a just disposal of the case, the Court should not enthrone a regulatory requirement into a dominant desideratum. Accordingly, in the larger interest of the justice, the reasonable opportunity is required to be granted to the party to lead his evidence and for that, opposite party can be compensated by way of costs.

For the reasons and law position as discussed above, the present revision petition is allowed and impugned order dated 06.01.2017 (Annexure P-1) is set-aside. The trial Court is directed to grant one effective opportunity to the petitioner-defendant to produce the entire evidence. It shall be responsibility of the petitioner-defendant to produce both the witnesses on the date fixed by the trial Court. However, the revision petition is burdened with costs of ₹20,000/- for causing delay, which shall be paid to the party opposite.

16.02.2017
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	✓ Yes/No
Whether Reportable	Yes/No