

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No. 1050 of 2017 (O&M)

DATE OF DECISION:07.04.2017

Sakinder Kaur

.....Petitioner

Versus

Bahadur Singh and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Sameer Rathore, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for quashing of impugned orders dated 21.11.2016 as well as dated 21.1.2017 passed by Civil Judge (Junior Division), Mohali, whereby, evidence of the petitioner-plaintiff has been closed by Court order and the application for recalling of aforesaid order has also been dismissed.

Briefly, the facts of the case are that the petitioner-plaintiff filed a suit for declaration to the effect that she alongwith defendants is the joint owner in possession of the suit land. Said suit was contested by the respondents-defendants by way of filing separate written statements i.e. one by defendants No.1 to 4 and other by defendants No. 5 and 6. However,

during course of leading evidence by the petitioner-plaintiff, her evidence was closed vide order dated 21.11.2016. The petitioner-plaintiff filed an application for permission to adduce remaining evidence but said application was also dismissed vide order dated 21.1.2017. Orders dated 21.11.2016 and 21.1.2017 are subject matter of challenge in the present revision petition.

Learned counsel for the petitioner submits that the trial Court has neither appreciated the submissions made by learned counsel for the petitioner nor the facts mentioned in the application properly and without taking into consideration the mandatory provisions of law, the impugned orders have been passed. Learned counsel further submits that the evidence required to be adduced by the petitioner is necessary for just decision of the case and a great injustice would be caused, in case the same is not allowed. Learned counsel also submits that in the impugned order it has wrongly been mentioned that the petitioner-plaintiff has availed 25 opportunities for leading evidence, whereas, all the opportunities were not availed by the petitioner-plaintiff only. The trial Court could have adopted other methods to summon the witnesses but without adopting those methods the trial Court has passed the impugned orders. At the end, learned counsel for the petitioner-plaintiff submits that only one effective opportunity may be granted to the petitioner for adducing entire evidence and she is ready to compensate the party opposite in monetary terms and no prejudice is going to be caused to the other party.

Heard the arguments advanced by learned counsel for the petitioner and have also perused the impugned orders, zimni orders and other documents available on the file.

Without issuing notice to the other party as it will not only delay the proceedings before the trial Court but would cause unnecessary burden upon the other party with expenses, the case is being decided.

The facts relating to filing of suit, written statement and closing of evidence of the petitioner-plaintiff and thereafter dismissal of application for recalling of order of closing evidence are not disputed. It is also not disputed that many opportunities have been granted to the petitioner for adducing her evidence and ultimately her evidence was closed by taking into consideration the objective of speedy trial. Earlier the application of the petitioner for amendment of the plaint was also dismissed vide order dated 16.1.2015, which was challenged before this Court by way of filing Civil Revision No. 8399 of 2015 and the same was disposed of vide order dated 16.3.2016.

A perusal of zimni orders would clearly show that all the dates have not been taken by the petitioner-plaintiff and a wrong finding has been given in the impugned order that the petitioner has availed 25 opportunities. The dates have been counted from the initial stage. Earlier an application was also moved for amendment of the plaint, which was dismissed on 16.1.2015 and the same was challenged before this Court by way of filing Civil Revision No. 8399 of 2015. Some of the dates were sought by the other party and on some dates the Presiding Officer was on leave. Even the dates on which the application for amendment of the plaint under Order 6 Rule 17 CPC as well as application for impleading LRs of defendant No.2 was pending have also been counted.

It is a settled proposition of law that the scope of exercise of judicial discretion is to achieve the ends of justice, in furtherance to the

provisions of Code of Civil Procedure. Undoubtedly, speedy trial is fundamental right of the litigants and the learned trial Court ought to have granted one more opportunity to lead evidence and ought not to have passed the order closing the evidence of the plaintiff straightway.

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 in **Kaila Devi and others vs. State of Haryana in 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 of 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.

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 she could not adduce her evidence. There is nothing on record to show as to whether the cost was imposed for not producing her evidence from time to time. Trial 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. 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.

By considering the submissions made by learned counsel for the petitioner as well as in the interest of justice, the present revision petition is allowed and impugned orders dated 21.11.2016 and 21.1.2017 are hereby set aside. The trial Court is directed to give one effective opportunity to the petitioner to conclude her evidence on one date. However, the petitioner is burdened with cost of ₹10,000/- to be paid to the party opposite by way of draft.

It is also made clear that in case the petitioner fails to conclude her evidence on one opportunity, she will not be entitled to avail any other opportunity.

April 07, 2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes