

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

C.R. No.1447 of 2017 (O&M)

Date of Decision: 01.03.2017

Ramu Gupta

....Petitioner

Versus

Harpreet Kaur and another

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Vinay Begra, 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 order dated 30.11.2016 (Annexure P-2), whereby, the evidence of the petitioner has been closed by Court order.

Briefly, the facts of the case are that the petitioner filed a suit for specific performance of an agreement to sell executed in his favour by respondent No.1-Harpreet Kaur. The issues were framed on 15.07.2015 and thereafter, the case was fixed for evidence of the plaintiff but no evidence was given by the plaintiff. A request was made by the petitioner to have more time to conclude his evidence but the request was not accepted and ultimately the evidence of the plaintiff was closed by order dated 30.11.2016.

Learned counsel for the petitioner submits that two PWs

tendered their affidavits in evidence on 10.08.2015 by way of examination-in-chief. Only the cross-examination of said two witnesses was necessary, for which, only one effective date was required. Learned counsel also submits that the evidence of the petitioner was closed by the Court order, whereas, his witnesses were present on 21.01.2016, 05.02.2016 as well as on 18.03.2016 but the date was sought by counsel for the respondent-defendants. Learned counsel also submits that it has wrongly been mentioned in the impugned order that adequate opportunities were granted to the petitioner to conclude his evidence. It has also been mentioned that total 14 effective opportunities were granted to conclude evidence, whereas, even as per *zimni* orders, which are on record, it is clear that only on two occasions, the PWs were not present before the trial Court as there were chances of compromise between the parties. Some of the dates were sought by the defendants and it cannot be said from a perusal of *zimni* orders that all dates were sought by the plaintiff-petitioner. Learned counsel also submits that for cross-examination of two PWs, only one effective opportunity is required.

Heard the arguments of learned counsel for the petitioner and have also perused the impugned order dated 30.11.2016 as well as other *zimni* orders.

Without issuing notice to other party as it will not only be a wastage of time of the Court but unnecessarily burden the other party to expenses to appear before this Court and will also linger on the litigation, the case is being decided.

On perusal of *zimni* orders, it is apparent that on 21.01.2016, PW1 and PW2 were present for cross-examination and the case was

adjourned on request of defendant. Again on 05.02.2016, it was the request of counsel for the defendant. On 08.04.2016 as well as on 17.05.2016, the Presiding Officer was on leave and on 19.08.2016, the case was adjourned on the ground that there are chances of compromise. Again the Presiding Officer was on leave on 12.09.2016 and the case was adjourned to 29.09.2016. On 29.09.2016, one more opportunity was granted to the plaintiff to conclude evidence subject to cost of ₹ 1,000/-. The case was adjourned on request of counsel for the defendant on 08.11.2016. Ultimately, the evidence of the petitioner was closed on 30.11.2016. On perusal of *zimni* orders, it appears that only seven opportunities were granted but in the impugned order, it is mentioned that total 14 opportunities have been granted.

Learned counsel for the petitioner undertakes to conclude his evidence only in one opportunity.

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 the impugned order dated 30.11.2016, that the petitioner be granted one effective opportunity to lead evidence as adequate opportunities were not granted and his evidence was closed by Court order. On perusal of impugned order, it is found that simply it has been mentioned that the case is pending for defendant's evidence who had already availed five effective opportunities including one last opportunity for leading and concluding its entire evidence but it was not completed. Speedy trial is fundamental right of the litigants and no

good ground is made out to linger on the case for evidence of defence and as such the defence evidence was closed by Court order. 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.

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. 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. 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 recorded above, the revision petition is allowed. Impugned order dated 30.11.2016 (Annexure P-2) is set aside. The trial Court is directed to grant one effective opportunity to petitioner to produce the entire evidence. It shall be the responsibility of the petitioner to produce the entire evidence on the date fixed by the trial Court. However, the revision petitioner is burdened with costs of ₹ 10,000/- for causing delay which shall be paid to the opposite party.

01.03.2017
gupreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes