

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

C.R. No. 1448 of 2017

Date of Decision:- 28.2.2017

Dhiana

...Petitioner

vs.

Kamlesh Rani and another

...Respondents

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Kartik Gupta, Advocate,
for the petitioner.

DAYA CHAUDHARY, J.

The present petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 04.01.2017 (Annexure P-5) passed by the learned Civil Judge (Junior Division), Hoshiarpur whereby evidence of the petitioner has been closed by order. A further prayer has also been made for granting one effective opportunity to conclude the entire evidence in the interest of justice.

Briefly, the facts of the case as made out in the present revision petition are that plaintiff-respondent No.1 filed a suit under Section 6 of the Specific Relief Act, for possession of house situated in Mohalla Bassi Khawaju, Hoshiarpur. As per case of the plaintiff, her mother-in-law, namely, Smt. Sheela Devi purchased a plot vide sale deed dated 07.12.1979 and thereafter site plan was got sanctioned and house in dispute was constructed upon that plot. After construction of the house, the plaintiff was

dispossessed on 25.10.2010 and thereafter that house was sold to defendants by her mother-in-law. Written statement to the suit was filed by raising certain grounds i.e. the suit was bad for non-joinder of necessary parties as Jaswinder Kaur, who was the exclusive owner in possession of the suit property was not impleaded as party. The issues were framed in the suit by the trial Court and the evidence of the plaintiff was concluded within a period of two years. Thereafter, the petitioner-defendant was to adduce his evidence. On 13.10.2015, one DW was examined and his cross examination was deferred for 9.11.2015. Thereafter, no DW was present in spite of various opportunities granted to defendant-petitioner. During pendency of the suit, an application under Order 1 Rule 10 read with Section 151 CPC was also moved which was allowed on 16.9.2016. Ultimately, vide order dated 4.1.2017, the evidence of the petitioner was closed on the ground that more than 20 opportunities were granted and even the last opportunity was also granted to conclude the evidence but no DW was present which has been challenged in the present revision petition.

Learned counsel for the petitioner submits that it has wrongly been mentioned that more than 20 opportunities were granted, whereas, only 8 opportunities were granted. Plaintiff examined only one witness i.e. herself as PW-1 and took almost 2 years to conclude the same. Learned counsel also submits that an application under Order 1 Rule 10 read with Section 151 CPC was moved at the fag end of the suit just to delay the proceedings. The purpose was to delay the cross-examination of the petitioner, whereas, it was well within knowledge of plaintiff-respondent

No.1 even at the initial stage that the owner in possession of the disputed

house is Jaswinder Kaur. Learned counsel also submits that said application was decided by trial Court on 16.9.2016 and Jaswinder Kaur was ordered to be impleaded as defendant No. 3 in the suit. Thereafter, notice was issued to newly added defendant No. 3 for filing written statement. It was mentioned that the newly added defendant-respondent No. 3 did not want to file reply and case was adjourned for 4.1.2017 and evidence of the petitioner was closed by mentioning wrong facts. Learned counsel submits that only one effective opportunity is required for cross-examination of the petitioner and he will conclude his entire evidence on a single date and no prejudice is going to be caused to the other party.

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

On perusal of impugned order, it transpired that more than 20 opportunities were granted and in spite of giving last opportunity, the evidence was not concluded whereas on perusal of zimni orders which are on record, it is clear that only 8 opportunities were granted. After allowing the application under Order 1 Rule 10 read with Section 151 CPC for impleading Jaswinder Kaur as party to the suit, the case was fixed for filing written statement on behalf of defendant-respondent No.3. It was mentioned in the order dated 4.1.2017, that newly added respondent No. 3 was not interested in filing any written statement. On that very day i.e. 4.1.2017, the evidence of the petitioner was closed by Court order as no DW was present on that day. The affidavit of the petitioner has been tendered in examination-in-chief and other defendant witnesses have already been

examined. Now, it is only for cross-examination of the petitioner which remains to be done.

Accordingly, by considering the submissions made by learned counsel for the petitioner, it appears that only one opportunity is required for cross examination of the petitioner as his examination-in-chief has already been done. Finding merit in the contentions raised by learned counsel for the petitioner and by considering the ratio of judgments passed by this Court in **Joginder Singh and others vs. Smt. Manjit Kaur, 2000 (2) RCR (Civil) 382, 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 and a judgment of Hon'ble the Apex Court in case **State of Punjab and another vs. Shamlal Murari and another**, 1976 AIR (Supreme Court) 1177, the present revision petition is allowed and impugned order dated 4.1.2017 (Annexure P-5) is hereby set aside. The trial Court is directed to give one more effective opportunity to the petitioner to conclude his entire evidence on one date. However, the petitioner is burdened with costs of ₹ 10,000/- to be paid to the party opposite.

February 28, 2017
poonam

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

No