

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

CR-1463-2017

Date of decision:1.3.2017

Nirvair Singh @ Nirbair Singh

...Petitioner

Versus

Avinash Gupta and others

...Respondent

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Amit Dhawan, Advocate for the petitioner

SNEH PRASHAR, J.

The present petition under Article 227 of the Constitution of India has been filed for setting aside the order dated 3.12.2016 passed by learned learned Civil Judge, Junior Division, Phillaur whereby the application filed by the petitioner-defendant No.1 for recalling the order dated 29.9.2016 (Annexure P5) vide which the evidence of the petitioner/ defendant No.1 was closed by order, was dismissed.

The submissions made by Mr.Amit Dhawan, Advocate representing the petitioner have been considered.

Respondent No.1 – plaintiff had filed a suit for possession by way of specific performance of agreement to sell dated 14.7.2011 executed qua the suit property situated at village

Mahal, Tehsil Phillaur. The petitioner had appeared and contested the suit by filing written statement.

Learned counsel for the petitioner submits that the petitioner could not pursue the matter because he remained under impression that in view of the compromise dated 30.7.2016 arrived at between him and respondent No.1- plaintiff in a case of dishonouring of a cheque dated 27.5.2013, respondent No.1 would withdraw the suit because he had paid an amount of Rs.4 lacs to him. But when he contacted his counsel, he was informed that his evidence had been closed by order of learned trial Court. Immediately thereafter, he filed an application for recalling the said order, but the same was dismissed by learned trial Court. Submitting that non- leading of evidence will seriously prejudice the case of the petitioner, learned counsel prayed that just one opportunity be granted to lead his entire evidence.

Perusal of the impugned order shows that the prayer for granting opportunity to lead evidence was declined to the petitioner by learned trial Court on the ground that his plea that he had not met his counsel after February, 2016, appeared to be wrong, since the same Advocate was representing him in a criminal case. However, in the light of fact regarding compromise etc. pleaded by the petitioner and not denied by the respondent and also in the interest of justice the petitioner deserves to be given one opportunity and that will

cause no prejudice to the rights of respondent No.1- plaintiff. The evidence recorded in due process of law will also help the trial Court to better appreciate the issues involved and render substantial justice to the parties.

To avoid unnecessary delay in the matter notice to the respondents is not being issued. The present revision petition is allowed. The order dated 3.12.2016 and 29.9.2016 are set aside and the learned trial Court is directed to grant one effective opportunity to the petitioner to lead his entire evidence subject to deposit of Rs.5000/- as cost with the District legal Services Authority, Jalandhar by the petitioner.

However, it is made clear that if the petitioner fails to lead his evidence on the date so fixed by learned trial Court, no further opportunity shall be granted to him.

1.3.2017
gsv

(SNEH PRASHAR)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No