

C.R. No.1470 of 2017

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

C.R. No.1470 of 2017

Date of Decision: 01.03.2017

Babu Ram Kaushik

....Petitioner

Versus

Jagbir Singh and another

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Ashwani Gaur, 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 the impugned order dated 20.12.2016 (Annexure P-3) passed by learned Additional Civil Judge (Senior Division), Gohana, whereby, the evidence of the plaintiff-petitioner has been closed by Court order.

Briefly, the facts of the case are that the plaintiff-petitioner filed a suit for specific performance of agreement to sell dated 24.06.2010 against defendant-respondent No.1. Written statement to the suit was filed and issues were framed. Petitioner examined PW-1-Ved Pal, PW-2 Babu Ram and examined himself on 06.03.2013. Thereafter, PW-3 Ravinder Kumar and PW-4 Amarjit Singh were examined, who are the attesting witnesses to the agreement to sell and the receipt on 10.01.2014. However, the evidence of the petitioner was closed vide order dated 20.12.2016 by the Court, which is subject matter of challenge in the present revision petition.

Learned counsel for the petitioner submits that the plaintiff-

petitioner has already tendered the affidavits of PWs, namely, Ravinder Kumar and Amarjit and only these two witnesses are to be cross-examined by the counsel for the defendants. Plaintiff-petitioner had already led his evidence and has also tendered the documents. The case was fixed for evidence of the plaintiff and PWs, namely, Babu Ram and Ravinder were also present. Counsel for the defendants sought a date as he was not feeling well and their cross-examination was deferred on his request. Learned counsel also submits that on two consecutive dates, the Presiding Officer was on leave and the case was adjourned. When the case was fixed for evidence, two applications were moved by defendant No.2 for sending the stamp papers to the printing press, Nasik and for amendment of written statement but no arguments were advanced by defendant No.2 on these applications. Learned counsel also submits that there was no fault on the part of the petitioner and only one effective opportunity is required for conclusion of his evidence.

Heard the arguments of learned counsel for the petitioner and have also perused the impugned order dated 20.12.2016 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 with expenses to appear before this Court which will also linger on the litigation expenses, the case is being decided.

On perusal of *zimni* orders, it is apparent that all the dates were not sought by counsel for the plaintiff only but two dates were given because the Presiding Officer was on leave and thereafter, two applications were moved by defendant No.2 and the evidence could not recorded. The

details of the proceedings recorded on various dates and mentioned in the petition, read are as under :-

“ That additional issues were framed by the Ld. Trial Court on 29/09/2015 and the trial was put to evidence of the plaintiff.

That on 06/10/2015, adjournment was sought by the counsel of the plaintiff-petitioner for leading his evidence as no PW was present and the case was adjourned to 13/10/2015.

On 13/10/2015, the affidavit of PW Babu Ram-plaintiff was tendered in his examination-in-chief and his cross examination was deferred on the request of counsel for the defendant for 20/10/2015.

On 20/10/2015, no PW was present and the case was adjourned to 30/10/2015.

On 30/10/2015, on the request of counsel of the defendant, cross examination of PW Babu Ram was deferred to 06/11/2015.

The defendant No.2 filed an application under Order 7 Rule 11 CPC for rejection of the plaint as the plaintiff has not filed the court fees as per the schedule of court fees and there was the efficiency in the court fees and that application was considered by the Ld. Trial Court on 19/01/2016 and the Ld. Trial Court vide order of even date granted opportunity to the plaintiff-petitioner for making up the deficiency of court fees and the case was adjourned to 27/01/2016 for this purpose.

That the deficiency of court fees was made good by the plaintiff-petitioner and the case was adjourned to 09/02/2016 for arguments on the remaining application filed by the defendant No.2 vide order dated 03.02.2016.

On dated 09/02/2016, arguments were not addressed and adjournments of sought and the case was adjourned to 19/02/2016 for arguments on the remaining

applications filed by defendant No.2.

On dated 26/02/2016, again adjournment was sought and the case was adjourned for 16/03/2016 for arguments on the remaining applications filed by defendant No.2.

On 16/03/2016, again adjournment was sought and the case was adjourned for 02/04/2016 for arguments on the remaining applications filed by defendant No.2.

On 02/04/2016, again adjournment was sought and the case was adjourned for 19/04/2016 for arguments on the remaining applications filed by defendant No.2.

On 19/04/2016, again adjournment was sought and the case was adjourned for 10/05/2016 for arguments on the remaining applications filed by defendant No.2.

On 10/05/2016, arguments were not addressed and the case was fixed for consideration on application for sending stamp papers to the printing press, Nasik but the counsel for defendant No.2-applicant made a statement that he does not press the application at the stage and it shall be pressed at the time of his evidence and in view of the statement, the application was kept pending and the case was adjourned to 11/05/2016 for consideration on an application filed under Order 6 Rule 17 read with Section 151 CPC by defendant No.2 for amendment of his written statement.

On 11/05/2016, the application for amendment of written statement of defendant No.2 was dismissed by the learned Trial Court and the case was adjourned to 20/07/2016 for evidence of the plaintiff.

On 20/07/2016, no PW was present and adjournment sought by the counsel for the plaintiff-petitioner and the same was allowed with subject to payment of Rs.500/- as cost and the case was adjourned to 06/08/2016.

On 06/08/2016, again, no PW was present and

adjournment was sought and the case was adjourned to 05/09/2016 subject to cost of Rs.1000/-.

On 05/09/2016, again, no PW was present and the case was adjourned to 28/09/2016 for cross examination of PW, namely, Amarjeet and Neelam and the remaining evidence of the plaintiff.

On 28/09/2016, the cross examination of PW Neelam was completed and other PWs, namely, Ravinder and Babu Ram were present but the Ld. Counsel for the defendant sought time by saying that he is not feeling well and the case was adjourned to 21/10/2016.

On 20/10/2016, the presiding officer was not holding Court as he was on leave and the case was adjourned to 21/11/2016.

Again on 21/11/2016, the Presiding Officer was on leave and the case was adjourned to 03.12.2016.

On 03/12/2016, cross examination of PW Babu Ram was completed and no other witness was present and the case was adjourned to 20/12/2016 for remaining evidence of the plaintiff.

On 20/12/2016, no PW was present and the evidence of the plaintiff was closed by court order and the case was adjourned to 17/01/2017 for evidence of the defendants, which has been assailed in this petition.”

It is relevant to mention here that the affidavits of two witnesses, namely, Ravinder Kumar and Amarjit have already been tendered in their examination-in-chief and these two witnesses, who are the witnesses to the agreement to sell as well as the receipt are to be cross-examined by the counsel for the defendants.

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 20.12.2016, 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 20.12.2016 (Annexure P-3) is set aside. The trial Court is directed to grant one effective opportunity to petitioner to cross-examine the said two witnesses. 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.

(DAYA CHAUDHARY)
JUDGE

01.03.2017

gupreet

Whether speaking/reasoned

Yes

Whether Reportable

Yes