

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

CR No.1629 of 2017.

Date of Decision: 06.03.2017.

Sahil Verma

....Petitioner.

VERSUS

M/s Girdhari Lal and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

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

SNEH PRASHAR, J.

The petitioner is aggrieved by the order dated 14.02.2017 passed by learned Civil Judge (Junior Division), Hoshiarpur, by virtue of which the evidence of the petitioner (defendants) was closed by order.

It has been mentioned by the petitioner (defendant No.2) in the petition that the evidence of respondent No.1-plaintiff was closed vide order dated 02.09.2016. Perusal of the zimni orders, reproduced in the petition, indicate that the first date for evidence of the petitioner (defendants) was 12.09.2016. Thereafter, the case was repeatedly adjourned for evidence of the petitioner (defendants). Though it is not clear from the order as to on which date examination in chief of DW1 was recorded by way of affidavit or otherwise but on 23.01.2017, the case was fixed for cross-examination of DW1. As the witness was unwell, his cross-examination was deferred.

Thereafter, the said witness appeared on 27.01.2017 and 31.01.2017 but on

learned counsel for respondent No.1-plaintiff. From the said facts, it can be said that all adjournments sought for evidence of the petitioner (defendants) could not be attributed to them.

It is further surprising to note from the certified copies of the orders dated 31.01.2017 and 14.02.2017 produced by the petitioner that on 31.01.2017 DW1 was present but his statement could not be completed as the request for adjournment of counsel for respondent No.1-plaintiff was accepted and the case was adjourned to 14.02.2017 for cross-examination of the said witness as well as for remaining evidence of the defendants. Thereafter, two orders were passed on 14.02.2017. As per the first order, no DW was present and on request the case was adjourned to 16.02.2017 for entire evidence of the defendants. However, striking of the first order as 'wrongly typed', a second order was passed vide which the evidence of the petitioner (defendants) was closed by order and the case was adjourned for rebuttal evidence and arguments. No reason was mentioned for cancelling the first order as 'wrongly typed' even when in both orders presence of counsel for the parties recorded is similar. There is nothing to reflect the occasion for changing the order.

In the facts and circumstances noticed above, the order closing evidence of the defendants (petitioner) appears to be illegal and perverse. To avoid unnecessary delay, in my considered opinion, notice to the respondent-plaintiff, is not required to be issued. In the interest of justice, the petitioner is allowed one opportunity to complete his statement. Learned trial Court will fix a date and the petitioner will appear on that date for his examination and cross-examination. The opportunity given is subject to costs of Rs.2000/-, which shall be deposited by the petitioner with the Legal

Aid Authority. In case the petitioner does not appear on the date fixed, no further opportunity shall be accorded. In the said terms, the petition is allowed.

(SNEH PRASHAR)
JUDGE

06.03.2017.
jitender sharma

Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No