

C.R. No. 2017 of 2017

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. C.R. No. 2017 of 2017

Renu BakshiPetitioner

Versus

Prem Parkash Sharma and othersRespondents

2. C.R. No. 2019 of 2017

Renu BakshiPetitioner

Versus

Prem Parkash Sharma and anotherRespondents

DATE OF DECISION:20.03.2017

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. OS Batalvi, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

This judgment of mine will dispose of two revision petitions bearing Nos. 2017 and 2019 of 2017 as the same have been filed to challenge the impugned order dated 16.2.2017 passed by Civil Judge, Junior Division, Chandigarh. However, for the sake of convenience, facts are being extracted from C.R. No. 2017 of 2017.

The petitioner-plaintiff filed a civil suit for declaration to the effect that she has become co-owner of House No. 1618, Sector 7-C,

Chandigarh along with respondents-defendants No.1 to 6 to the extent of 1/7th share each, on the basis of family settlement and by virtue of Will dated 1.5.2006 executed by Late Smt. Vimla Sharma, who is in possession of portion of the said house as co-owner. A further prayer has also been made for declaration that Will dated 18.7.1994 and 1.12.1993 purported to have been executed by late Captain Ram Nath Sharma are illegal, null, void, nonest and in operative, resulting out of fraud and are not binding upon the petitioner-plaintiff. The petitioner-plaintiff has also claimed relief for permanent injunction restraining defendants No. 1 to 6 or their agents from dispossessing or taking forcible possession or interfering in the peaceful possession, utilization of portion in her share except with due process of law.

During pendency of the suit, the petitioner-plaintiff moved an application for summoning two witnesses, namely, Mr. R.L. Monga, Advocate and concerned official from the office of Sub-Registrar, U.T., Chandigarh. The evidence of the petitioner-plaintiff was closed vide order dated 16.2.2017 by Court order on the ground that she had already availed three opportunities since 31.1.2007 and had failed to conclude her evidence, said order is subject matter of challenge in the present revision petition.

Learned counsel for the petitioner contends that the evidence of the plaintiff was closed by the order of Court on 16.2.2017 within a short period and as such it cannot be considered that sufficient and reasonable opportunities were granted to her to lead her evidence. Witness No.2 is an official witness and he cannot appear and bring the official record without issuance of proper summons. Learned counsel further contends that while moving an application on 7.2.2017 for summoning both the witnesses it was

mentioned that the petitioner-plaintiff be allowed to deposit the diet money for summoning but still his request was rejected by passing totally a non-speaking order.

Heard the arguments advanced by learned counsel for the petitioner and have also gone through the impugned order dated 16.2.2017 and other documents available on record.

Without issuing notice to other party as it may not only cause delay but unnecessarily burden the opposite party with expenses, the present petition is being decided.

The application moved by the petitioner-plaintiff for summoning has been dismissed only on the ground that she had availed three effective opportunities and had failed to conclude her evidence. Undisputedly the petitioner was granted very short time for production of her evidence after deposit of diet money for summoning the witnesses. Out of two, one is an official witness and the petitioner could not compel the witnesses to appear without issuance of summons.

It is settled proposition of law that the scope of exercise of judicial discretion is to achieve the ends of justice. The petitioner could not produce the witnesses on the dates fixed for evidence and ultimately her evidence was closed. The procedural law is enacted with the object of doing substantial justice between the parties. Its purpose is to determine the dispute and provide finality to such determination. No doubt the petitioner was granted opportunities but during that period she could not adduce her evidence. There is nothing on record to show as to whether any cost was imposed upon the petitioner for not producing her evidence. The trial Court would have cautioned the petitioner in case the evidence was not produced

or cost would have been imposed. The order of closing of evidence of the party has foreraching conclusions. In the present case sufficient opportunities were granted but the witnesses could not be produced as the petitioner was not in a position to compel them to remain present. While doing justice technicalities are not to be seen. The order closing the evidence should give some reasons so that it may not affect the interest of the parties in the suit. The court should normally pass the order of lesser gravity before passing the order of the kind as it has been passed in the present case. At this stage, it may be appropriate to refer to a judgment of this Court in the case of **Joginder Singh Vs. Smt. Manjit Kaur** 2000 (2) RCR (Civil) 382 (P&H), wherein, it has held as under:-

“The inevitable principle that emerges from the aforesaid established principle of law is that the Court must take recourse to the powers vested in the court under the codified law at the appropriate stage and keeping in view the facts and circumstances of that case. It is true that it will not be possible to formulate a strait-jacket formula but passing of adverse orders against a party in the event of default at some stage, at least would be but necessary. In other words, the court must take recourse to such powers as they are essential for achieving the ends of justice. Expeditious disposal of the suit is the very foundation of the amplified procedure prescribed in the Code for conclusion of the suit. May be, a reasonable approach in this regard would, in any case, be highly appreciable. Even applying the concept of reasonableness in exercise of judicial powers would be fully satisfied in the present case. The said

purpose is fully achieved in the present case. The court granted opportunities to the plaintiffs to lead evidence, then granted last opportunity and then finally imposed costs for adjourning the case to a date when finally evidence of the plaintiff was closed. Counsel was put at notice and so was the party i.e. the plaintiffs were also cautioned by the Court by imposition of costs and that any further default is bound to result in an adverse orders against the plaintiffs. Persistent default on the part of the plaintiff inspite of such cautions and fair approach adopted by the learned trial Court left the learned trial Court with no option but to pass the impugned order. I would, willingly predicate the approach adopted by the learned trial Court in this case as then alone it is possible to ameliorate ways and means for expeditious disposal of the suit within the provisions of the Code and prevent prescribed procedure being rendered disfunctional.”

The principle of law, laid down by Hon'ble the Apex Court in the case of **State of Punjab and another Vs. Shamlal Murari (AIR 1976 Supreme Court 1177)** was to the effect that, the procedure, is in the ultimate, the hand-maid of justice and not its mistress, and is meant to advance its cause, and not to obstruct the same. A procedural rule, therefore, has to be liberally construed, and care must be taken, that so strict an interpretation be not placed thereon, whereby, technicality may tend to triumph over justice. It has to be kept in mind, that an overly strict contruction of procedural provision may result in the stifling of the material evdience of a party, even if, for adequate reasons, which may be beyond his

control. We must always remember that procedural law is not to be a tyrant; but a servant, not an obstruction, but an aid to justice. Procedural prescriptions are the hand-maid, and not mistress, a lubricant, not a resistant, in the administration of justice. 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. After all, the courts are to do justice, not to wreck this end product on technicalities.

For the reasons and law position as discussed above, revision petitions bearing Nos. 2017 and 2019 of 2017 are allowed and impugned order dated 16.2.2017 in both the petitions is set aside. However, the trial Court is directed to grant one effective opportunity to the petitioner to produce her entire evidence subject to payment of ₹5000/- each as costs to opposite party.

March 20, 2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes