

C.R. No. 2584 of 2017

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No. 2584 of 2017

DATE OF DECISION:07.04.2017

Babu Lal through next friend Punit Kumar (Son)Petitioner

Versus

Sodagarmal (now deceased) through his LR'sRespondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr.Gulshan Nandwani, 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 impugned order dated 22.2.2017 passed by Civil Judge (Junior Division), Rewari, vide which, additional evidence of the petitioner has been closed as well as order dated 3.3.2017, vide which, the application moved for recalling of order dated 22.2.2017 has been dismissed.

Briefly, the facts of the case as made out by the appellant are that the petitioner-plaintiff is an insane person for the last 17 years. There is a joint Haveli of the parties in Rewari. When the Defendant-respondent tried to dispossess the petitioner-plaintiff from the disputed property, a suit for declaration was filed by the petitioner-plaintiff through his next friend i.e. his son Punit Kumar. The petitioner-plaintiff i.e. Punit Kumar filed an application for leading additional evidence in the shape of medical record regarding insanity of his father Babu Lal, which was allowed by the learned trial Court vide order dated 13.12.2016 subject to payment of cost of

₹2000/-. It was observed in that order that in case the cost amount was not paid on the next date of hearing i.e. 15.12.2016, the application was deemed to have been dismissed. The amount of cost was not paid by the plaintiff and accordingly the application for additional evidence was dismissed vide order dated 15.12.2016. Thereafter, the petitioner challenged aforesaid orders dated 13.12.2016 and 15.12.2016 before this Court by way of filing Civil Revision No. 399 of 2017, which was allowed vide order dated 20.1.2017. The trial Court was directed to reconsider the application for leading additional evidence afresh subject to payment of costs of ₹2000/- already imposed by the trial Court. In pursuance of order passed by this Court on 20.1.2017, the petitioner filed another application for reconsideration of additional evidence on 16.2.2017 and the cost amount of ₹2000/- was deposited on the same day. The application filed by the petitioner was allowed on the same day and the case was fixed for additional evidence but none was present on behalf of the petitioner on 22.2.2017 and additional evidence was closed by order of the Court. Thereafter, another application was filed for recalling of order dated 22.2.2017 but the same was also dismissed on 3.3.2017. Orders dated 22.2.2017 and 3.3.2017 are subject matter of challenge in the present revision petition.

Learned counsel for the petitioner submits that initially the amount of cost could not be deposited due to demonetization. Thereafter, in pursuance of order dated 20.1.2017 passed by this Court, an amount of ₹2000/- was deposited as cost and an application for reconsideration of additional evidence was filed on 16.2.2017 but due to noting down of wrong date, the petitioner could not produce the additional evidence on the date

fixed and his evidence was closed by order of the Court on 22.2.2017. Learned counsel further submits that the medical evidence of Babu Lal, the father of petitioner-plaintiff-Punit Kumar was required to be produced in the Court to prove his insanity, which was necessary for just decision of the case. At the end, learned counsel for the petitioner contends that interest of the party opposite would not be prejudiced in any manner and only one effective opportunity is required to conclude his evidence.

Heard the arguments advanced by learned counsel for the petitioner and have also perused the impugned orders dated 22.2.2017 and 3.3.2017, whereby, the additional evidence of the petitioner-plaintiff has been closed and application for recalling of order dated 22.2.2017 has also been dismissed.

Admittedly, the petitioner-plaintiff filed an application for leading additional evidence in the shape of medical record to prove insanity of his father Babu Lal, which was allowed by the learned trial Court vide order dated 13.12.2016 subject to payment of cost of ₹2000/-. However, it was observed in the order that in case the cost amount was not paid on the next date of hearing i.e. 15.12.2016, the application shall be deemed to have been dismissed. The amount of cost could not be deposited by the plaintiff and accordingly the application for additional evidence was dismissed vide order dated 15.12.2016. Thereafter, the petitioner challenged orders dated 13.12.2016 and 15.12.2016 before this Court by way of filing Civil Revision No. 399 of 2017, which was allowed vide order dated 20.1.2017 and the trial Court was directed to reconsider the application for leading additional evidence afresh subject to payment of costs of ₹2,000/- already imposed by the trial Court. In pursuance of said order passed by this Court

on 20.1.2017, the petitioner filed another application for reconsideration of additional evidence on 16.2.2017 and the cost of ₹2000/- was also deposited. The application filed by the petitioner was allowed on the same day and the case was fixed for hearing on 22.2.2017 but none was present on behalf of the petitioner on 22.2.2017 and the additional evidence was closed by order of the Court. The application for recalling of order dated 22.2.2017 was also dismissed on 3.3.2017.

The petitioner-plaintiff intended to tender in evidence the medical certificate of his father, namely, Babu Lal by examining the doctor, member of the Board of PGIMS Rohtak, who issued disability medical certificate. The concerned doctor had to come from Rohtak but he could not be examined because of short time span given by this Court vide order dated 20.1.2017.

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 witness before the trial Court because of noting down of wrong date and his 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 an opportunity to adduce additional evidence subject to payment of cost but the amount of cost could not be deposited by the petitioner and ultimately the additional evidence of the petitioner was closed by order of the Court. Insanity of father of petitioner-plaintiff was to be proved by examining the Doctor concerned, who issued the certificate of insanity. His examination is necessary for just decision of the controversy in hand. No doubt the order closing evidence require reasons to be recorded as

it is going to 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 has been passed in the present case. It is to be kept in mind that no prejudice may be caused to either of the parties. It has also to be kept in mind that an overly strict construction of procedural provision may result in stifling of the material evidence of a party. The procedural law is to be adopted by keeping in view the interest of the parties and the same may not be an obstruction but it should be an aid to justice as has been held in judgment of Hon'ble the Apex Court in the case of **State of Punjab and another Vs. Shamlal Murari** (AIR 1976 Supreme Court 1177) as well as judgment of this Court in **Joginder Singh and others Vs. Smt. Manjit Kaur** 2000 (2) RCR (Civil) 382 (P&H).

In view of the submissions made by learned counsel for the petitioner and law position as discussed above, the revision petition is allowed and impugned orders dated 22.2.2017 and 3.3.2017 are hereby set aside and the trial Court is directed to grant one effective opportunity to the petitioner to produce the entire evidence subject to payment of costs of ₹25,000/-.

April 07, 2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes