

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

Civil Revision No.3264 of 2015 (O&M)

Date of Decision : 17th May, 2017

Kuldeep and others

..... Petitioners

Versus

Ranbir Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Rajbirinder Singh Chahal, Advocate
for the petitioners.

Mr. Dinesh Arora, Advocate
for respondent Nos.19 to 24.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned order dated 04.05.2015

(Annexure P-2), passed by the learned trial Court whereby plaintiffs' evidence was closed by Court order, plaintiffs-petitioners have approached this Court by way of instant revision petition under Article 227 of the Constitution of India, for setting aside the said order.

Notice of motion was issued.

Heard learned counsel for the parties.

A bare perusal of the impugned order at page 18 of the paper book makes it crystal clear that plaintiffs had already availed nine effective opportunities for leading their evidence. However, it is pertinent to mention here that the learned counsel for the petitioners has tried to clarify that plaintiffs, as a matter of fact, availed not nine but seven effective opportunities for producing their evidence before passing the impugned order. Before proceeding further, it is necessary to refer to the earlier zimni order dated 24.04.2015, passed by the learned trial Court which has been reproduced in the impugned order at Page 19 of the paper book and the same reads as under:-

“Today PW-1 Jagatnarain and PW-2 Kuldeep are present and examined. No other PW is present. The learned counsel for the plaintiffs stated that cross examination of PW-3 Om Parkash is necessary in this case, was partly examined 22.04.2015. Hence, he requested an adjournment for remaining examination of PW-3 Om Parkash. Heard. In the interest of justice one more opportunity is hereby provided subject to payment of cost of Rs.500/-. It is also clarified that it is the responsibility of the plaintiff to bring PW-3 Om Parkash before the court and no assistance in this regard be provided by the court for securing his presence. Accordingly, the case is adjourned for 04.05.2015 for cross examination of PW3 Om Parkash at the responsibility of the plaintiff.”

Perusal of the abovesaid order dated 24.04.2015 will leave no room for doubt that it was the request made by the learned counsel for the plaintiffs himself before the learned trial Court that it was necessary to cross-examine PW3 Om Parkash. On that day, learned counsel for the plaintiffs before the learned trial Court did not make any prayer either in writing or oral that the plaintiffs wanted to examine any other witness in addition to PW3 Om Parkash. Further, it was also made clear to the plaintiffs that it would be their responsibility to bring PW3 Om Parkash before the Court and no assistance in this regard would be provided by the Court for securing his presence.

Thereafter, neither the plaintiffs moved any application before the learned trial Court seeking the assistance of the learned Court for securing the presence of PW3 Om Parkash nor they challenged the abovesaid order dated 24.04.2015. Having said that, this Court feels no hesitation to conclude that the learned trial Court was well within its jurisdiction to pass the impugned order dated 04.05.2015 and the same deserves to be upheld.

It is also a matter of record that PW3 Om Parkash was not present before the learned trial Court on 24.04.2015. He also did not come present for his cross-examination on 04.05.2015. So far as the judgment of this Court relied upon by the learned counsel for the petitioners in **Mahant Jagmohan Singh versus Mahant Karamjit Singh 2013 (2) PLR 708** and **order of this Court dated 03.03.2015**, passed in **Civil Revision No.2649 of 2014 Joginder Kaur versus Amrik Singh and others** are concerned, there is no dispute about the observations made therein. However, on perusal of the cited judgments, none of them have been found of any help to the petitioner being distinguishable on facts.

It is the settled proposition of law that peculiar facts of each case are to be examined, considered and appreciated before applying any judgment thereto. Sometime, difference of even one word can make the word of difference as held by the Hon'ble Supreme Court in **Padmasundara Rao (Dead) Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533.**

Reverting to the facts of case in hand, this Court is of the considered opinion that plaintiffs had never been serious in pursuing their case effectively. Admittedly, seven effective opportunities had already been availed by the plaintiffs before passing the impugned order. Om Parkash PW3 was their own cited and summoned witness. He was not an official witness. Further, abovesaid order dated 24.04.2015 would further show that PW3 Om Parkash was not bound down by the Court for the next date of hearing i.e. 04.05.2015.

On the other hand, it was left at the responsibility of the plaintiffs themselves to ensure the presence of their cited witness PW3 Om Parkash. It was made clear that no assistance shall be provided by the Court for securing his presence, however, plaintiffs failed to avail this opportunity provided to them by the learned trial Court and that too for no good reasons. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned trial Court committed no error while passing the impugned order and the same deserves to be upheld for this reason as well.

During the course of hearing, learned counsel for the petitioner could not point out any patent patent illegality or perversity in the impugned order which may warrant interference at the hands of this Court, while exercising its revisional jurisdiction under Article 227 of the Constitution of India. The impugned order is a self contained and reasoned order and the same deserves to be upheld for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present revision petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant revision petition stands dismissed, however, with no order as to costs.

17th May, 2017
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(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No