

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

Sr. No.118

CR No.3109 of 2017 (O&M)
DECIDED ON: May 03, 2017

**MUKHTIARI (SINCE DECEASED) THROUGH HER LR SHEELO
W/O RAKMA D/O SH. SHISHU S/O SH. UDAY RAM**

..PETITIONER

VERSUS

GURDEV SINGH AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Upender Prahser, Advocate,
for the petitioner.

JASPAL SINGH, J. (ORAL)

CM No.9559-CII of 2017

Application is allowed as prayed for.

CR No.3109 of 2017

Through the instant civil revision petition preferred under Article 227 of the Constitution of India, petitioner has sought setting aside the order dated April 11, 2017 (Annexure P-4) passed by learned Civil Judge (Jr. Divn.) Kaithal, whereby the petitioner-defendant No.2(b) has not been allowed to lead her evidence on the ground that she should led the evidence before the evidence to be led by the contesting defendants as petitioner-defendant No.2(b) has admitted the claim of respondent-plaintiff. Further, her evidence has been closed by the orders of the court, without affording her proper opportunity.

CR No.3109 of 2017 (O&M)

2. A glance at the plaint transpires that the petitioner-defendant No.2(b) is not a proforma-respondent. Even though, she has admitted the claim of the plaintiff but she cannot be debarred from leading her evidence. No doubt, she was supposed to adduce the evidence, if any, on her behalf prior to the leading of evidence by the contesting witness but it can be termed to be a mere irregularity or illegality. Thus, the order whereby her evidence has been closed by the trial court is not legally and factually justified. Accordingly, impugned order dated April 11, 2017 is set aside by way of acceptance of instant petition. The trial court is directed to afford an effective opportunity to the petitioner-defendant No.2(b) to adduce and conclude her evidence. However, plaintiff(s) as well as the contesting defendants shall also be afforded an opportunity to lead their evidence to rebut the evidence, if any, adduced by petitioner-defendant No.2(b).

3. With these observations, instant petition stands disposed of. However, if respondents are so aggrieved of this order, they may approach this Court as this order has been passed in their absence.

May 03, 2017

Ankur

**(JASPAL SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No