

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

CR No.3880 of 2017

Date of decision: 26.05.2017

Jaswant Singh

..Petitioner

Versus

Pritam Singh

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Kunal Dawar, 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 25.04.2017 (Annexure P-1) passed by the Additional Civil Judge (Senior Division), Bathinda, whereby, the evidence of the petitioner-plaintiff has been closed by order at the stage of cross-examination of plaintiff witnesses and also for grant of one effective opportunity for their cross-examination.

Briefly, the facts of the case as made out in the present revision petition are that the plaintiff-petitioner filed a suit for possession by way of specific performance of an agreement to sell dated 18.03.2011 executed by the respondent-defendant in favour of petitioner-plaintiff. After filing of written statement, the issues were framed on 07.03.2015 and thereafter, the case was adjourned on various dates for evidence of plaintiff. Ultimately, vide order dated 25.04.2017, the evidence of the plaintiff-petitioner was closed by order on the ground that the plaintiff was given many

opportunities to conclude his evidence but failed to conclude the entire evidence. Said order of closing of evidence has been challenged by way of filing the present revision petition.

Learned counsel for the petitioner submits that initially, there were talks of compromise between the parties and adjournments were sought. The plaintiff's witnesses were examined-in-chief but their cross-examination was deferred on the request of learned counsel for the defendant. Learned counsel further submits that the petitioner-plaintiff never wanted to examine more witnesses and the case was at the stage of cross-examination of plaintiff's witnesses, when the impugned order was passed. Learned counsel also submits that only on two dates, plaintiff's witnesses were not present and by passing the impugned order, the evidence of the plaintiff-petitioner has been closed. Learned counsel also submits that it would seriously prejudice the case of the petitioner and injustice would be caused to him. Learned counsel requests for grant of one effective opportunity to conclude his entire evidence and the petitioner undertakes to complete his whole evidence in one effective opportunity.

Heard arguments of learned counsel for the petitioner and have also perused the impugned order as well as other documents available on the file.

Without issuing any notice to the other party as it may not only delay the proceedings but unnecessary expenses will have to be incurred by the respondent, the present case is being disposed of.

The facts relating to filing of suit, written statement, framing of issues; examination of witnesses and passing of impugned order are not

disputed. It is also not disputed that earlier there were talks of compromise between the parties and the case was adjourned on request.

On perusal of *zimni* orders reproduced in the petition, it is apparent that initially, there were talks of compromise between the parties and thereafter, PW1-plaintiff and PW2-Suresh Mittal were examined-in-chief and only their cross-examination was pending. Both the aforesaid witnesses were present for cross-examination but it was deferred on request of learned counsel for the defendant. Only on two dates, plaintiff's witnesses were not present and ultimately, vide impugned order, the evidence of the plaintiff-petitioner was closed. It has also been argued by learned counsel for the petitioner that only cross-examination of two plaintiff's witnesses is required and he would not examine any other witness.

For substantive justice between the parties, the technicalities should not come on the way. The order of closing the evidence is harsh specially when prejudice is to be caused and there is no fault on the part of the plaintiff-petitioner. The petitioner is undertaking to conclude his entire evidence only in one effective opportunity and in case, the petitioner is not afforded one opportunity for leading his evidence, it would result into miscarriage of justice and irreparable loss would be caused to him.

By considering the submissions made by learned counsel for the petitioner; by exercising the inherent power; and by considering the fact that the petitioner has undertaken to conclude his entire evidence on one effective opportunity and the petitioner is ready to compensate the party opposite in monetary terms, the present revision petition is allowed and

impugned order dated 25.04.2017 is set-aside. The petitioner is granted one effective opportunity to conclude his entire evidence subject to payment of costs of ₹10,000/- to be paid to the respondent by way of demand draft. The trial Court is directed to grant one effective opportunity to the petitioner to conclude his evidence. However, it is clarified that in case, the petitioner fails to conclude his evidence on one effective date, no further opportunity will be granted to him.

26.05.2017
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes