

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

129

CR No.3996 of 2017 (O&M)

Date of decision: 25.07.2017

Pargan Singh

..... Petitioner

Versus

Narinder Pal Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. S.S. Chatrath, Advocate
for the petitioner.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff has filed the present revision petition under Article 227 of the Constitution of India against the order dated 08.02.2012 passed by the Court dismissing the suit under Order 17, Rule 3, CPC as the plaintiff failed to produce any evidence. Although, several opportunities had been granted to them. Plaintiffs did not even himself appeared in the witness box.

In this case, the suit was instituted way back on 13.09.2006. The suit remained pending for five years and eight months approximately. Plaintiff did not examine even a single witness. It has been recorded by the Court that several opportunities were given to the plaintiff but not a single witness was examined.

Counsel for the petitioner has submitted that the Court could not dismissed the suit under Order 17, Rule 3 and the suit could only be dismissed under Order 17, Rule 2.

I have examined the submission made by learned counsel for

the petitioner.

Order 17, Rule 2 deals with an eventuality when parties failed to appear on day fixed whereas Order 17, Rule 3 deals with the situation where either party fail to produce evidence etc. Order 17, Rule 2 and Order 17, Rule 3 are extracted as under:-

“2. Procedure if parties fail to appear on day fixed.- Where, on any day in which the hearing of the suit is adjourned, the parties or any of them fail to appear the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit.

[Explanation.- Where the evidence or a substantial portion of the evidence of any party has already been recorded and such party fails to appear on any day in which the hearing of the suit is adjourned, the Court may, in its discretion, proceed with the case as if such party were present.]

3. Court may proceed notwithstanding either party fails to produce evidence etc.- Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, [the Court may, notwithstanding such default,-

(a) If the parties are present, proceed to decide the suit forthwith; or

(b) If the parties are, or any of them is, absent, proceed under Rule 2].”

Reading of the impugned order would show that counsel for the plaintiff was very much present when the order was passed. Even counsel for one of the defendant was present. In these circumstances, the Court could not invoke Order 17, Rule 2. Learned counsel for the petitioner has cited judgment passed by Hon'ble Supreme Court of India

reported 2005(4) SCC Page 173 titled 'Mohan Dass and others Vs. Ghisia Bia' in support of his contention. I have gone through the aforesaid judgment. In that case, neither plaintiff nor his witnesses were present. Therefore, it was held that the suit could only be dismissed under Order 17, Rule 2.

Learned counsel for the petitioner has also been cited judgment of the Kerala High Court reported 2009(5), RCR (Civil), 544. Learned counsel has drawn my attention towards para No.23 of the judgment which reads as under:-

*“23. The Full Bench of the Madhya Pradesh High Court also has ruled in **Rama Rao V. Shantibai, (AIR 1977 Madhya Pradesh 222)** that for deciding whether appearance of a counsel in the absence of a party will amount to appearance by the party for the purpose of Order 17 Rule 3, the essential question to be considered is whether the advocate had been instructed for conducting the case. By majority, the Full Bench answered the questions which were referred, in the following terms:-*

(1) If, when a suit is called on for hearing, party's counsel appears and seeks adjournment but when adjournment is refused he retires saying that he has no instructions, it will be no appearance of the party and Rule 2 Order 17 C.P.C. alone would be attracted. However, in such a case, the defaulting party must show sufficient cause for non-appearance as well as for not fully instructing the counsel.

(a) If the counsel had sought adjournment because he was instructed by his client to ask for an adjournment only, and not to proceed with the trial if adjournment be refused or (b) if the counsel feels a necessity to seek adjournment so that he may prepare himself and, on his own, seeks adjournment which is refused, it will be no appearance of the party and Rule 2 Order 17 C.P.C. alone would be attracted.

2. *If, when a case is called on for hearing, the counsel appears (without making any request for adjournment) merely to inform the Court that he has no instructions and, therefore, would not appear, it will be no appearance of the party and Rule 2 Order 17 C.P.C. alone would be attracted.”*

Kerala High Court has relied upon full Bench of Madhya Pradesh High Court.

I am afraid even judgment passed by the Kerala High Court does not comes to the rescue of the petitioner. In that case, plaintiff had pleaded instructions that he had only instructions to seek adjournment.

In this case, counsel for the plaintiff was present. He sought further time for leading evidence. Court found that several opportunities had been granted. As noticed earlier, the suit remained pending for more five years and eight months.

It would be pertinent to mention here that even impugned order was passed by the trial Court on 08.02.2012 whereas the present revision has been filed in May, 2017.

In view of the above facts and circumstances on the record, I do not find any ground to interfere in the revision petition.

Revision petition is dismissed.

25.07.2017
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No