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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.4128 of 2014 (O&M)

Date of Decision : 26.10.2017

MAHARAJA LAND DEVELOPERS PVT. LTD.

....PETITIONER

VERSUS

HARDIAL SINGH AND OTHERS

...RESPONDENTS

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Vijay Lath, Advocate
for the petitioner.

Mr. Jaideep Verma, Advocate
for respondents No.4 (a,b,c,d and e).

B.S. WALIA, JUDGE (ORAL)

1. Prayer is for setting aside order dated 15.05.2014-Annexure P-1, passed by the learned Civil Judge (S.D.), Ropar in Civil Suit No.283 of 2009, whereby the evidence of the petitioner-plaintiff has been closed by order on the ground that the plaintiff had failed to conclude evidence despite availing repeated effective opportunities and had also failed to pay cost's imposed vide order dated 10.04.2014.

2. Learned counsel for the petitioner contends that it was factually incorrect that the petitioner-plaintiff had not paid costs of Rs.200/- imposed vide order dated 10.04.2014 and petitioner having paid costs of Rs.200/- was evident from zimni order dated 15.05.2014. In the circumstances, it is contended that the impugned order passed by the

learned Civil Judge (S.D.), Ropar dated 15.05.2014 closing the evidence of the petitioner plaintiff is based on factually incorrect basis.

3. Learned counsel for the respondents contended that numerous opportunities had been availed of by the petitioner before the passing of the impugned order, therefore no case was made out for granting any further opportunity. Learned counsel for the petitioner concedes that a number of opportunities had been availed by the petitioner but prayed for one opportunity to the petitioner to conclude evidence subject to payment of costs in order to avoid grave injustice being caused to the petitioner by non-examination of the remaining PW's. Reliance is placed on the decision of this Court in **Devinder Sehdev vs. Malkiat Singh, 2011 (5) R.C.R. (Civil) 891**, wherein while taking into account that evidence of the petitioner therein had been closed on failure to conclude evidence despite having availed numerous opportunities, a coordinate Bench of this Court granted one more opportunity to the petitioner-tenant to conclude his entire evidence at his own risk and responsibility, subject to payment of costs. Relevant extract of the aforesaid decision is reproduced as under:-

“ 2. After hearing counsel for the petitioner, this Court is of the view that principle of fair play and balance of equities demand that an opportunity should be granted to the petitioner-tenant to conclude his entire evidence on the date fixed by the trial Court. The petitioner shall examine all of his witnesses at his own risk and responsibility. However, since the petitioner has not been diligent enough to conclude his evidence, this is a case where the respondent-landlord ought to be compensated, as he has suffered due to delay at the instance of the petitioner-tenant. Hence, a cost of Rs. 5000/- is awarded in favour of the respondent-landlord, on payment whereof, one opportunity shall be granted to the petitioner-tenant.”

judgment cited only a few opportunities had been availed whereas in the instant case innumerable opportunities had been availed. On the basis of rival contentions it emerges that admittedly approximately 10 effective opportunities were availed by the petitioner. Although, 10 effective opportunities for concluding evidence can by no stretch of imagination be said to be inadequate, yet the plea of the learned counsel for the petitioner is for grant of one final opportunity else irreparable damage would be caused to the petitioner. Plea is also of the impugned order having been passed on factually erroneous assumption of non payment of costs.

5. I have considered the submissions of learned counsel for the parties. Impugned order has been passed on account of costs not having been paid besides evidence not having been concluded despite availing numerous effective opportunities. Costs not having been paid appears to have been erroneously recorded in the impugned order. However, a number of opportunities were availed for concluding evidence. Although the conduct of the petitioner in not concluding evidence despite availing number of opportunities cannot be said to be commendable, yet I am of the considered view that it would be in the interest of justice if one last and final opportunity is granted to the petitioner to conclude evidence subject to payment of costs. Accordingly, petitioner is granted one last and final opportunity to conclude evidence at its own risk and responsibility subject to payment of Rs. 20,000/- as costs to the respondent.

6. Accordingly, order dated 15.05.2014-Annexure P-1, passed by the learned Civil Judge (S.D.), Ropar in Civil Suit No.283 of 2009, closing the evidence of the petitioner-plaintiff is set aside. Parties through learned

counsel are directed to put in appearance before the learned trial Court on 18.11.2017 for payment of costs and for a date to be given by the learned trial court to the petitioner for concluding its evidence. Petitioner shall ensure presence of witnesses and shall conclude evidence on the date as is given by the learned trial court for the said purpose. It is made clear that in case the petitioners evidence is not concluded on the date given by the learned trial court, no further opportunity shall be granted. Revision petition allowed as above.

**(B.S. WALIA)
JUDGE**

October 26, 2017

rajneesh

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No