

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

C.R. No.4464 of 2015

Date of Decision:- 30.05.2017

Lok Raj

....Petitioner

vs.

Gurjit Singh and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Umesh Kumar Kanwar, Advocate,
for the petitioner.

Mr. Raman Goklaney, Advocate,
for respondents No. 1 and 5.

DAYA CHAUDHARY, J.

Petitioner-Lok Raj has approached this Court by way of filing the present revision petition under Article 227 of the Constitution of India for setting aside impugned order dated 19.5.2015 passed by the Additional Civil Judge (Sr. Division), Fazilka, whereby evidence of the petitioner has been closed by Court order.

Briefly, the facts of the case, as made out in the present petition are that plaintiff-petitioner filed a suit for recovery of ₹ 7,60,884.56/-. He could not conclude his evidence in spite of last opportunity granted to him and his evidence was closed vide order dated 19.5.2015, which is subject-matter of challenge in the present revision petition.

Learned counsel for the petitioner submits that as per order dated 19.1.2015, the examination-in-chief of the petitioner was completed and request was made by the opposite party for his cross-examination which was fixed for 27.1.2015. On that day, petitioner and his witness Pardeep Kumar were present but request was made by counsel for the defendant and case was adjourned to 19.2.2015. Learned counsel submits that it is proved from the perusal of zimni orders that it was not the fault of the plaintiff only as dates were taken by other side as well. At the end, he submits that only one effective opportunity is required to examine PW-Pardeep Kumar, who is Accountant of the plaintiff and can prove the entries maintained in the account books. He undertakes not to examine any other witness and is also ready to compensate the respondent-defendant in monetary terms.

Learned counsel for respondents No. 1 and 5 submits that evidence of the plaintiff has rightly been closed as he had availed sufficient opportunities including last opportunity to conclude his evidence but he could not conclude the same. Thereafter, his evidence was closed by order of the Court. Learned counsel submits that by granting him an opportunity not only the delay would be caused but the interest of the respondents would also be prejudiced.

Heard arguments of learned counsel for the parties and have also perused the impugned order dated 19.5.2015 (Annexure P-3). Learned counsel for the petitioner has placed on record zimni orders which shows that on 29.8.2014, PW-1 Lok Raj was present and partly examined in chief. Thereafter, case was adjourned to 9.10.2014 but it was taken up on 7.10.2014 as the Presiding Officer was on leave on 9.10.2014 and

10.10.2014. On perusal of zimni orders, which have been placed on record, it transpires that all the dates were not sought by the plaintiff's counsel but by the counsel for the defendant also. On some of the dates, plaintiff's witness was present but he was partly examined. On 19.5.2015, the affidavit of Pardeep Kumar, Accountant was ready to be tendered into evidence as it was attested by the Oath Commissioner. Said witness could not be examined as the evidence of the plaintiff was going on. Plaintiff witness Pardeep Kumar, Accountant has made entries in the account books. He was to be examined being the material witness. His evidence was necessary for just decision of the case. Learned counsel for the petitioner has undertaken to examine only one witness i.e. PW Pardeep Kumar, Accountant and for that only one effective opportunity has been sought.

No doubt, speedy trial is a fundamental right of the litigants and no good ground is made out to linger on the case for evidence of the parties. The Court is under an implied obligation to keep balance between the parties to a suit to achieve the ends of justice, which is the basic paramount object of the Code of Civil Procedure. It is also undisputed that inherent powers should not be used as an instrument to intrude the powers of the Court in regard to a procedure or a remedy if specifically provided under the Code. As per provisions of Orders 16 and 18 of CPC, the intention of Legislature is to fairly conclude the evidence of the parties without unreasonably compromising the expeditious disposal of the suit. The Court may grant further time to the party to commence the evidence in case there is default. A specific power has been given by the Legislature under Order 17 Rule 3 of the Code for disposal of the suit or to proceed

with the suit as the Court may deem fit and proper. However, these powers vested in the Code cannot be rendered ineffective or meaningless by granting indefinite adjournments for leading evidence by a party. Such approach is bound to decimate the very purpose of the Code. However, while exercising the discretion a uniform balance is to be maintained between the parties to meet out the ends of justice. Sometime for granting justice, technicalities are to be ignored. In the larger interest of justice, the reasonable opportunity is required to be granted to the party to lead his evidence and for that purpose, the opposite party can be compensated by way of costs.

In the present case also, no doubt, the petitioner has been granted reasonable opportunities to conclude his evidence but due to circumstances as reflected in zimni orders, the plaintiff's evidence could not be concluded and ultimately his evidence was closed by order of the Court.

On the other hand, it cannot be said that the delay was on the part of the plaintiff only as it was on the part of the other side as well. Even on some of the dates, the Presiding Officer was on leave.

By considering the submissions made by learned counsel for the petitioner that he has undertaken to conclude his entire evidence on one effective opportunity and compensate the party opposite in monetary terms, the present revision petition is allowed and impugned order dated 19.5.2015 (Annexure P-3) is set aside subject to payment of ₹ 20,000/- as costs, to be paid to the party opposite 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 also clarified that in case the petitioner fails to conclude his evidence on one date, no further opportunity will be granted to him.

May 30, 2017
poonam

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes