

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

**CR No.4455 of 2016
Date of Decision-10.01.2017**

Bimaljit Kaur ... Petitioner

Versus

Gurpal Singh ... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Arun Bansal, Advocate for the petitioner.

Mr. Rajan Bansal, Advocate for respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed order dated 11.05.2016 passed by Additional District Judge, Bathinda whereby order dated 20.05.2013 passed by Civil Judge (Junior Division), Bathinda was upheld.

[2]. Plaintiff-petitioner filed a suit for permanent injunction, restraining the defendant from interfering in the peaceful possession or illegally and forcibly dispossessing the plaintiff from any portion of land measuring 25 bighas, 01 biswa.

[3]. Vide order dated 25.11.2016, trial Court restrained the defendant from interfering in the possession of the plaintiff over the suit land. The interim order was subsequently confirmed by the trial Court on 17.08.2007. Plaintiff tendered affidavits of PW1 and PW2 in their examination-in-chief on 28.08.2008 and the case was adjourned for cross examination of the witnesses at the instance of the defendant. Cross examination of PW 1 i.e. plaintiff was done

on 13.11.2009 and thereafter, the case was pending for cross examination of PW 2.

[4]. Vide order dated 10.02.2011 passed by the High Court in CR No.547 of 2011, it was ordered to conclude the cross examination of PW2-Ranjit Singh on 19.02.2011 i.e the date already fixed before the trial Court. Plaintiff was directed to produce the witness on the date fixed. Defendant was also directed to make arrangements to summon the record with which the defendant wanted to confront the witness.

[5]. On 19.02.2011, the matter was adjourned to 11.03.2011 and the witness i.e. PW2-Ranjit Singh was bound down for the date fixed. On 11.03.2011, the cross examination of PW2-Ranjit Singh was completed. Before that CR No.1703 of 2011 was filed by the petitioner against the order dated 19.02.2011 challenging the same on the ground of non-compliance of directions issued by the High Court vide order dated 10.02.2011. During course of arguments before the High Court, it was transpired that the witness had been cross examined, therefore, the revision petition was dismissed as having become infructuous on 11.03.2011.

[6]. Thereafter, the case remained pending for defendant's evidence. Trial Court vide order dated 19.09.2011 appointed a Local Commissioner for recording of the evidence. Against the said order, CR No.6263 of 2011 was filed by the petitioner. High Court vide order dated 04.11.2011, disposed of the revision petition

without issuing notice, directing the trial Court to seek a report from the Local Commissioner as to why the witness could not be examined within the stipulated time of one month from 10.09.2011 till date. On showing his inability to record the evidence, trial Court would take the case back and itself complete the evidence of the defendant within three months positively. It was also directed that the Court first call the list of witnesses, then would call for depositing diet money, PF and correct addresses. If the defendant fails to produce the witnesses, then the Court would proceed in accordance with law.

[7]. Thereafter, plaintiff-petitioner filed a transfer application No.623 of 2011 under Section 24 CPC in the High Court. High Court after recording some incriminating facts found nothing on record in terms of allegations raised by the plaintiff-petitioner. The Court expressed its anguish at the conduct of the plaintiff in tarnishing the image of the institution. The Court also found that the dispute is *inter se* between the brother and sister and the plaintiff herself had delayed the recording of defendant's evidence by seeking repeated adjournments. The factum of filing of earlier revision was also noticed in the order dated 09.02.2012 passed by the High Court. Transfer application was dismissed with costs of Rs.25,000/- to be deposited by the plaintiff-petitioner in the District Legal Services Authority, Bathinda within a specified period. Trial Court was directed to ensure compliance of the said order.

[8]. Feeling aggrieved against the order dated 09.02.2012 passed by the High Court, plaintiff-petitioner unsuccessfully challenged the same in review petition which was dismissed on 28.03.2012. Against the said order, plaintiff filed SLP before the Hon'ble Apex Court and the same was also dismissed on 10.07.2012.

[9]. The case was fixed for 04.05.2012 before the trial Court. DW-Gurpal Singh was present for cross examination, however, plaintiff was not present, nor any authorized representative of the plaintiff put in appearance before the trial Court. Husband of the plaintiff was present and he made a request for adjournment for cross examination of defendant witness. It was stated by the husband of the plaintiff that plaintiff had challenged the order dated 09.02.2012 passed by the High Court in Supreme Court and till such time, the matter be kept pending. Prayer for adjournment was opposed by the defendant and it was asserted that the suit be dismissed under Order 9 Rule 8 CPC. Neither the plaintiff, nor her recognized agent/pleader was present despite repeated calls. Plaintiff had already availed number of opportunities for cross examination of the defendant.

[10]. After noticing the conduct of the plaintiff with reference to past proceedings, trial Court found that the plaintiff has been harassing the defendant by not cross examining the witness and had violated the order passed by the High Court by not depositing

the costs within prescribed period. The trial Court also found that the plaintiff has been harassing the defendant-Gurpal Singh by seeking repeated adjournments. The husband of the plaintiff is a retired Army Officer. The plaintiff herself is an educated lady and is financially sound. Witness of the defendant-Nahar Singh, Advocate is an old person about 85 years of age. The plaintiff was found to be guilty of violating the directions passed by the High Court. The suit was dismissed under Order 9 Rule 8 CPC for non-appearance and for violation of Order dated 09.02.2012 passed by the High Court. Since the cost imposed was not paid by the plaintiff, therefore, the trial Court ordered that the order shall be executed against her.

[11]. Thereafter, application for restoration of the suit was filed by the plaintiff-petitioner before the trial Court. Trial Court dismissed the application vide order dated 20.05.2013. Trial Court observed in the aforesaid order that the suit was not only dismissed for non-appearance, but also dismissed due to non-compliance of order passed by the High Court. Since the suit was dismissed not only on account of non-appearance of plaintiff and her counsel, but also due to non-depositing of costs, therefore, trial Court held that the Court had no jurisdiction to review its order dated 04.05.2012.

[12]. Against the aforesaid order dated 20.05.2013, plaintiff-petitioner filed an appeal before the lower Appellate Court. Lower

Appellate Court after noticing necessary facts, dismissed the appeal by recording that the suit was dismissed not only on account of non-appearance of the plaintiff and her counsel, but also for non-compliance and violation of order dated 09.02.2012 passed by the High Court vide which cost of Rs.25,000/- was imposed and the same was ordered to be deposited within two weeks with the District Legal Services Authority, Bathinda. The compliance was not made by the plaintiff and therefore, appeal was dismissed vide order dated 11.05.2016. Against the order dated 11.05.2016, the present revision petition came to be filed.

[13]. I have heard learned counsel for the parties.

[14]. Learned counsel for the petitioner stated that subsequently the petitioner moved CM No.13079-CII of 2016 in TA No.623 of 2011 on the ground that cost has been paid by her. High Court passed the order dated 12.07.2016, noticing that the cost was paid belatedly, but that will be deemed to be paid within time.

[15]. The conduct of the petitioner has already been noticed by the Courts at different intervals. Number of revision petitions were filed in the High Court by the plaintiff-petitioner herself. On the one hand, plaintiff-petitioner was seeking early disposal of the suit and sought necessary directions from the High Court and thereafter, even challenged the order of adjournment dated 19.02.2011. On the other hand, plaintiff herself has delayed the cross examination of the defendant despite availing six effective

opportunities. The suit was dismissed for non-prosecution on 04.05.2012. Application for restoration was filed which was dismissed on 20.05.2013. The cost was deposited only on 24.06.2013 and it was not explained as to how the cost was paid without there being any order from the competent Court. The case of the petitioner was conspicuously silent about the authority under whom the amount of cost was paid by the petitioner. Thereafter, appeal was filed on 03.07.2013 before the lower Appellate Court.

[16]. After dismissal of transfer application on 09.02.2012, even Review Application No.CR-44-CII of 2012 was also dismissed on 28.03.2012 by the High Court. The dismissal of the suit for non-prosecution on 04.05.2012 was justified on both the counts i.e. due to non-appearance of the plaintiff and her counsel as well as on account of non-deposit of the costs. Since the payment of cost on 24.06.2013 was made even after dismissal of SLP on 10.07.2012, therefore, it has no legal consequence even though the same was allowed to be deposited. The order passed by the trial Court was rightly upheld by the lower Appellate Court by order dated 11.05.2016. The factum of deposit of cost was not highlighted by the plaintiff before the lower Appellate Court, even though the same was allegedly deposited by plaintiff on 24.06.2013. The conduct of the plaintiff always remained deplorable throughout. A person who has not come to the Court with clean hands does not deserve any equitable relief.

[17]. In view of facts discussed above, this Court does not see any equitable consideration in favour of the plaintiff-petitioner. This revision petition is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

10.01.2017
Prince

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No