

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

**CR No. 4805 of 2017 (O&M)
Date of Decision: July 26, 2017**

Charan Singh

..Appellant(s)

Versus

Mrs. Rajwati and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Suresh Kumar Kaushik, Advocate
for the petitioner.

ANITA CHAUDHRY, J.

This revision has been filed by the defendant whose evidence had been closed.

A suit had been filed in 2013 by Rajwati. Issues were framed in 2015 and the plaintiff had closed its evidence on 12.04.2016 and the case was fixed for defendants' evidence on 26.04.2016. No witness was present on 26.04.2016 and 04.05.2016. On 13.05.2016 two witnesses were present but an adjournment was requested and the witnesses were bound down for the next date i.e. 24.05.2016. On the adjourned hearing, both the witnesses of the defendants did not turn up and a request for adjournment was made and the case was adjourned to 11.07.2016. Even on the adjourned hearing no witness was present and

the case was adjourned. On 20.07.2016 two witnesses who had earlier come, appeared and their statement in part was recorded and their cross examination was deferred on the request of the counsel for the defendants and the case was adjourned to 02.08.2016. On the adjourned hearing a request was made on behalf of the defendants that one of the defendant had died and they wanted to implead the LRs. The case was adjourned thereafter for 3 – 4 months for decision on that application and thereafter, the case was adjourned for notice to the LRs and it was completed only on 22.02.2017.

The next date fixed for the evidence of the defendants was 03.03.2017. On that day, no witness was present and the case was adjourned to 21.03.2017. On the adjourned hearing, both the witnesses were present but the counsel for the plaintiff sought adjournment and the case was adjourned for cross-examination for 05.04.2017. Only one witness was present on that day and his cross-examination was completed and the case was adjourned to 20.04.2017 for evidence of defendants. It was made clear that this should be the last opportunity and in the absence of evidence, it would be deemed to be closed by Court.

On 20.04.2017 DW-Raju was present and was partly recorded and his cross-examination was deferred again on the request of the plaintiff. The case was adjourned for cross-examination of this witness and further an order was made that since there was no other witness and the defendants have already availed several opportunities,

therefore, their evidence was closed, however, the Court allowed the plaintiff to cross-examine the witness. The cross-examination was completed on 17.05.2017 and the case was fixed for rebuttal and arguments on 04.07.2017.

The defendant is aggrieved of the order dated 20.04.2017 and 17.05.2017 vide which their evidence had been closed.

Counsel for the petitioner urges that they had moved an application before the Court for summoning a witness and had requested the Court for deposit of diet money and the application was filed on 06.05.2017 which was allowed and the amount was assessed and it was deposited the same day and notice was also issued but service was not effected. Counsel submits that it was the duty of the Court to ensure that service was effected and the evidence could not have been closed and sufficient opportunity had not been granted.

The zimni orders made available today present a sorry state. The defendants' evidence for the first time was fixed for 26.04.2016. The case was adjourned five times in 2016 and the defendants failed to examine any witness. Thereafter, two adjournments were taken by the plaintiff's counsel for cross-examination of the witnesses. The witnesses appeared and were bound down but subsequently failed to appear. Thereafter, six months' time was taken for impleading the LRs and giving notice to them. Even till that date, the defendants did not file the list of witnesses nor deposited the diet money. It was only when their evidence was closed that an

application was submitted. The Court allowed the defendants to deposit the diet money in routine and the Ahlmad also issued the summons without going through the record which normally is done. Since the evidence of the defendants had been closed, the defendants could not have submitted such an application for summoning witnesses. Their remedy was to move an application for additional evidence. After the evidence had been closed, there was no occasion for them to make a request for deposit of diet money. Sufficient opportunities had been granted. The Court was required to give only three effective opportunities to the parties to lead evidence. The defendants have taken more than a year to lead their evidence. The evidence was rightly closed. I see no reason to interfere in the order.

The petition is dismissed in limine.

July 26, 2017

sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No