

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CR No.5073 of 2014
Date of decision:9.5.2017
...Petitioner

Nisha Wadhwani

Versus

Bijender Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Jitender Nara, Advocate for the petitioner.

Mr.Amit Jain, Advoate for respondents No.1 to 5.

RAMESHWAR SINGH MALIK, J. (Oral)

Present civil revision petition, at the instance of plaintiff, filed under Article 227 of the Constitution of India, is directed against the order dated 25.4.2014 (Annexure P-1) passed by the learned trial Court, whereby application of the petitioner-plaintiff for leading her remaining evidence, by recalling the earlier orders dated 15.01.2013 and 11.07.2013, was dismissed.

Notice of motion was issued and in the meantime, learned trial court was directed to adjourn the case beyond the date fixed before this Court.

Heard learned counsel for the parties.

A bare perusal of the impugned order would show that petitioner-plaintiff was negligent in pursuing her case expeditiously and taking due interest. Negligence on the part of the petitioner was sought to be explained by the learned counsel for the petitioner, contending that during the pendency of the suit, original plaintiff Sh. Tikam Parasram-father of the present petitioner died. However, said fact alone would not completely justify the negligence on the part of the petitioner, because many

opportunities were granted to lead the evidence.

The nature of remaining evidence, which is sought to be produced by the plaintiff-petitioner, is, however, coming from the official record. It is so said because the remaining evidence, which is sought to be produced, is in the form of mutation, fard patwar, jamabandis, khasra girdawari etc. In addition to this official record, plaintiff No.2 was to be produced as her own witness and one fingerprint and handwriting expert was sought to be examined. Owing to the nature of documentary evidence, there was no scope of its fabrication or manipulation, as it is coming from the proper custody and based on official record.

Further, if the plaintiff-petitioner is not permitted to produce plaintiff No.2 as her own witness and fingerprint and handwriting expert is not permitted to be examined, a serious prejudice would be caused to the plaintiff-petitioner. However, it is equally true that the petitioner must compensate the defendants for her negligence so that unwarranted prejudice is not caused to the defendants. Having said that, this Court feels no hesitation to conclude that petitioner deserves to be allowed two more effective opportunities by the learned trial court. It is also pertinent to note that once the above-said evidence is brought on record, it will facilitate the learned trial Court as well to arrive at a judicious conclusion so as to render an effective judgment.

It also goes without saying that rules of procedure are meant for advancing the cause of justice. If the petitioner-plaintiff is denied this opportunity, she will suffer serious prejudice and the ends of justice would be defeated. Since the learned trial Court could not properly appreciate the above-said material aspects of the matter, while passing the impugned order,

it cannot be sustained, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order has been found to be suffering from patent illegality, it cannot be sustained. Accordingly, the impugned order dated 25.4.2014 passed by the learned trial court is hereby set aside. Application moved by the petitioner under Section 151 CPC would stand allowed.

Consequently, the learned trial court is directed to grant two more effective opportunities to the petitioner-plaintiff to conclude her remaining evidence. It is also made clear that in case the petitioner still fails to conclude her remaining evidence in two more effective opportunities, she will not be entitled for any further indulgence on the part of the learned trial Court. Petitioner shall be permitted to lead her remaining evidence, however, subject to payment of costs of Rs.10,000/- to the respondents-defendants which shall be paid by the petitioner-plaintiff to the respondents before the learned trial court on the next date of hearing.

Resultantly, with the above-said observations made and directions issued, the instant civil revision petition stands allowed, in the abovesaid terms.

9.5.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No

Whether Reportable : Yes/No