

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

**CR No.5011 of 2017 (O&M)
Date of Decision: 03.10.2017**

Baljinder Singh and another

...Petitioner(s)

Versus

Sukhdev Kaur

...Respondent(s)

CORAM:-HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Jaideep Verma, Advocate
for the petitioner(s).

Mr. Vikas Mohan Gupta, Advocate
for the respondent.

ANITA CHAUDHRY, J.

CM-19189-CII-2017

This application has been filed under Section 151 C.P.C. for preponing the date of hearing of the main revision petition.

Application is allowed and the main revision petition is taken up for today.

CR No.5011 of 2017

This revision is directed against the order dated 30.05.2017 passed by Civil Judge (Junior Division), Roopnagar vide which their evidence was closed. A suit had been filed by the respondent. Issues were framed in November, 2013. The plaintiff closed its evidence in November, 2016. The case was fixed for evidence of the defendant.

The *zimni* order commencing from 20.02.2017 show that the defendant was present and his affidavit was tendered but on the request made on behalf of the defendant, the witness was bound-down for the fixed date. The Court adjourned the matter giving two weeks time. On the next date of hearing, the witness did not turn up and last opportunity was granted for 07.03.2017. On the adjourned hearing, he appeared but a request for adjournment was made on behalf of the plaintiffs and the witness was bound-down for the next date i.e. 27.03.2017. The defendant was present on that date but the counsel for the plaintiffs was not present therefore the cross-examination could not be completed. On the adjourned date i.e. on 11.04.2017, the defendant was present but as Court time was over, the witness was again bound-down for 05.05.2017. On the adjourned hearing, counsel for the plaintiffs moved an application for adjournment and last opportunity was granted for the plaintiffs to cross-examine the defendant failing which right of cross-examination was to be closed. The case was adjourned for 11.05.2017 on that date, cross-examination of Baljinder Singh was completed and the case was adjourned for 30.05.2017. No witness was present on 30.05.2017 and the trial Court recorded that 10 opportunities had been granted and they had not filed any process fee or diet money and their evidence was closed. It is against that order the defendant has come up seeking one more opportunity.

The submission on the first date was that the plaintiff had been granted 3 years to complete their evidence whereas their evidence was closed in a span of 3 months and most of the adjournments which were given were at the plaintiff's counsel's instance either he was not present or they were not ready for cross-examination.

The counsel for the petitioner says that they were only seeking one adjournment and they would not summon the witness but would produce the witness or take *dasti* summons and they may be allowed one more opportunity.

Counsel appearing for the respondent opposes the petition and urges that the trial Court had rightly recorded that 10 adjournments had been granted and they had not given any list of witnesses nor had deposited the process fee and as last opportunity was granted, their evidence had rightly been closed.

Issues were framed in November, 2013. The plaintiff took 3 years to close its evidence. The trial Court found that the case had become old and started adjourning the matter giving one weeks adjournment. I find that the case had been adjourned 7-8 times out of which the plaintiff's counsel had taken more adjournments, either he was not available or sought time for cross-examination. It is a fit case where the order for closing the evidence should be set aside and the defendant be allowed one opportunity to lead his evidence.

The petition is allowed subject to payment of Rs.3000/- as costs to be paid by the petitioner to the other side and on the terms noted above. The petition is allowed. One more opportunity is granted to him to lead their evidence. The case is stated to be fixed for this week. The trial Court would adjourn the case beyond the Diwali holidays to enable the defendant to produce his witness. The witnesses would be produced by the defendant or they would take *dasti* summons in time and get the service effected.

October 03, 2017
ps-l

(ANITA CHAUDHRY)
JUDGE

Whether Reasoned/Speaking
Whether Reportable

Yes/No
Yes/No