

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.5960 of 2015(O&M)
Date of Decision: 19.09.2017

Karam Singh
Versus
Roshan Singh

.....Petitioner

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Munish Gupta, Advocate
for the petitioner.

Mr. Arun Jindal, Advocate
for the respondent.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has assailed the order dated 03.07.2015 passed by Civil Judge (Junior Division), Patiala vide which evidence of the defendant/petitioner was closed by order of the Court and order dated 28.08.2015 passed by the same Court vide which the application for recalling of the order dated 03.07.2015 was dismissed.

[2]. On 11.09.2015, following order was passed by this Court:-

“Learned counsel for the petitioner at the very outset prays that one opportunity be given to the defendant-petitioner to adduce evidence to examine Secretary/Clerk of Municipal Corporation, Patiala on the factum of complaint filed by the petitioner against M/s Dhot and Sons Commission Agent, Sanour, Distt. Patiala and expert in his affirmative evidence. Learned counsel further

states that the application was filed by the petitioner on 18.07.2015 and there is no reply filed by the plaintiff.

Notice of motion for 21.09.2015.

Dasti as well.

Passing of final order by the trial Court is stayed till the next date of hearing.”

[3]. Plaintiff filed a suit for specific performance. After completion of the plaintiff's evidence on 11.07.2014, defendant started his evidence, but could not conclude the same despite many opportunities including the last opportunity. The evidence of the defendant was closed by order of the Court on 03.07.2015 and the case was adjourned for rebuttal (if any) and arguments.

[4]. Application for recalling of the order dated 03.07.2015 was filed by the defendant/petitioner on 18.07.2015 on the ground that the defendant wanted to examine Secretary/Clerk of the Municipal Corporation, Patiala along with file of complaint made by petitioner Karam Singh against M/s Dhot and Sons Commission, Agent, Sanour, District Patiala. The order dated 03.07.2015 was sought to be recalled. No reply was filed by the plaintiff/respondent to the aforesaid application dated 18.07.2015.

[5]. Civil Judge (Junior Division), Patiala vide order dated 28.08.2015 dismissed the application dated 18.07.2015. That is how, both the aforesaid orders have been assailed in the present revision petition.

[6]. Though number of opportunities were availed by the defendant in leading his evidence and even the evidence of the defendant was closed by order of the Court, but in view of nature of evidence which the petitioner intended to lead i.e. to counter the expert evidence led by the plaintiff in affirmative, in my considered opinion, one opportunity can be given to the defendant/petitioner to lead the evidence in affirmative subject to cost. Trial Court shall give one effective opportunity to the defendant/petitioner to examine Secretary/Clerk of Municipal Corporation, Patiala along with file of the complaint made by the petitioner against M/s Dhot and Sons Commission, Agent, Sanour, District Patiala and also to lead evidence in affirmative i.e. the expert evidence to counter the expert evidence led by the plaintiff subject to payment of cost of Rs.20,000/- to be paid to the respondent. Payment of cost shall be the condition precedent for granting aforesaid indulgence by the trial Court.

[7]. Disposed of accordingly.

September 19, 2017.

Prince

Whether reasoned/speaking

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No