

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

C.R. No.5709 of 2017

Date of decision: 25.08.2017

Komal Sharma

...Petitioner

VS.

Malkit Singh and anr.

...Respondents

Coram: HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present:- Mr. Manish Kumar Singla, Advocate
for the petitioner.

HARINDER SINGH SIDHU, J.

Komal Sharma, plaintiff-petitioner has filed this revision petition for setting aside the order dated 10.07.2017 of learned Additional Civil Judge (Senior Division), Mohali, whereby, her evidence has been closed by order and the case fixed for evidence of the defendants-respondents.

Briefly, the facts are that the petitioner filed a suit for recovery of Rs.55,00,000/- paid as earnest money to the defendants-respondents vide agreement to sell dated 10.05.2013 executed by them in her favour along with interest @ 18% per annum from 10.05.2013 till realization. Issues were framed by learned trial Court on 07.11.2016 and the case was fixed for evidence of the petitioner on 15.12.2016. On 17.02.2017, the petitioner moved an application for depositing diet money for summoning four witnesses. Though, the petitioner desired to get herself examined after the evidence of the other witness, but as they did not come on 15.12.2016, 02.02.2017 and 17.02.2017 and the case had to be adjourned, the petitioner

chose to get herself examined on the very next date i.e., 08.03.2017 as PW1 and tendered her affidavit Ex.PW1/A. The case was then adjourned to 11.04.2017 for cross examination of the petitioner. On 11.04.2017 the petitioner was present, but the Counsel for the respondents was not available for cross examination. Hence, case was adjourned to 06.05.2017 for cross examination of the petitioner. On 06.05.2017, no PW was present and the case was adjourned to 10.07.2017. On 10.07.2017, two PWs namely Nidhi and Baljeet Singh were present, but as counsel for the petitioner was not present, a request was made for adjournment, which was declined. The evidence of the petitioner was ordered to be closed and the case adjourned to 05.08.2017 for evidence of the defendants. It is this order which is impugned in the present petition.

Ld. Counsel for the petitioner states that after tendering her affidavit on 08.03.2017, the petitioner was available for cross examination, but twice the case was adjourned because of non-availability of the counsel for the defendant. He admits that on one occasion thereafter i.e., 06.05.2017 the petitioner and the other PWs did not appear, but on 10.07.2017 two PWs were present and adjournment was sought only because of the absence of the counsel for the petitioner. He states that the witnesses present on 10.07.2017 were official witnesses i.e. Ahalmad (Criminal) and Patwari (circle) of the village Budhanpur, and their examination along with record is very essential for the just decision of the case. If they are not permitted to be examined, the petitioner would suffer irreparable loss. The petitioner prays that if she is given one opportunity she will produce the entire evidence on one day.

After hearing Ld. Counsel for the petitioner and taking note of the facts and circumstances of the case, in my view it will be in the interest of justice, if the petitioner is allowed one opportunity to lead her entire evidence.

Accordingly, the petition is allowed. The impugned order dated 10.07.2017 is set aside. Learned trial Court is directed to grant one effective opportunity to the petitioner to produce her entire evidence. This shall be subject to payment of Rs.10,000/- (ten thousand only) as compensatory costs to the respondents.

The present petition is being disposed of without issuing notice to the respondents as that may not only delay the proceedings but also burden them with unnecessary expenditure. However, if the respondents feel aggrieved of this order, they are at liberty to file an application for recalling the same.

August 25 , 2017

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**(HARINDER SINGH SIDHU)
JUDGE**

<i>Whether speaking/ reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>