

C.R. No. 582 of 2017

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No. 582 of 2017

DATE OF DECISION:17.02.2017

Anil Kumar and another

.....Petitioners

Versus

Tahir and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Saurav Khurana, Advocate
for the petitioners.

DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside order dated 16.12.2016 passed by Additional Civil Judge (Senior Division), Mewat, vide which, the evidence of the petitioners has been closed by the order of Court.

The respondents-plaintiffs filed a suit for declaration and permanent injunction and when it came up for hearing on 16.12.2016, the evidence of petitioners-defendants No.1,2 and 5 was closed by the order of Court and they could not lead their evidence because of noting down wrong date of hearing.

Learned counsel for the petitioners contends that the cost imposed upon the petitioners was duly paid and they were to lead their evidence on 16.12.2016 but as they had noted down the wrong date and could not reach the Court on the date fixed, so they could not lead their evidence. Learned counsel further contends that the petitioners are ready to conclude their evidence in a single effective opportunity and are ready to

compensate the opposite part in monetary terms.

Heard the arguments advanced by learned counsel for the petitioners and have also perused the impugned order dated 16.12.2016 and other documents available on the file.

A perusal of impugned order dated 16.12.2016 clearly shows that the evidence of the petitioners has been closed on the ground that previous cost was not paid and no DW was present on the date fixed. It is also mentioned in the impugned order that neither any evidence was present on behalf of the remaining defendants nor any request was made. Earlier sufficient opportunities were availed by the defendants but they failed to conclude their entire evidence and no further opportunity was required to be given.

Without issuing notice to the other party as it will not only prolong the case but will unnecessary burden the other party with expenses, the case is being decided.

It is a settled preposition of law that the scope of exercise of judicial discretion is to achieve the ends of justice, in furtherance to the provisions of Code of Civil Procedure. A limited prayer has been made by the learned counsel for the petitioners, while challenging the impugned order dated 16.12.2016, that the petitioners be granted one effective opportunity to lead their evidence so that they can produce all the evidence on that date. No doubt the petitioners have been granted ample opportunities but on the date fixed the witnesses could not come present as wrong date was noted down and cost amount was also not paid. Undoubtedly, speedy trial is fundamental right of the litigants and no ground is made out to linger on the case for evidence of defendants or plaintiffs. The learned trial Court

should have been granted one more opportunity to lead evidence before passing of order of closing of evidence.

In case **Joginder Singh and others vs. Smt. Manjit Kaur**, 2000 (2) RCR (Civil) 382, this Court has observed as under:-

“3. Should such discretion by the Court can ever be termed as "uncontrolled and un-guided exercise of judicial discretion by the Court? "I have no hesitation in answering the above question in the negative. Certainly, it is not possible for the Court to provide the panacea to all problems arising at different stages of the suit. The Code of Civil Procedure is a comprehensive code and the different stages of a suit are controlled and regulated by various checks and limitations provided in the Code. The pious wish of the legislation for expeditious disposal of the suit runs like a golden thread in the various provisions of the Code. The inherent powers vested in the Court under section 151 of the C.P.C. are of very wide magnitude, but are certainly controlled by self restraints and restrict exercise of such powers depending on merit of each case. The Court is under an implied obligation to balance the equities between the parties to a suit to achieve the ends of justice, which is the basic paramount object of the Code. The equities would demand that power under the provisions of the Code or the inherent powers should be exercised by the Court to correct imbalances or inequities resulting from

unnecessary adjournments, between the parties. As a result of fault of one party to the suit, the other is certainly put to inconvenience or unnecessary harassment. Delay in conclusion, of "proceedings again is a factor of vital importance, as such, uncontrolled opportunity to a party to conclude its evidence in any number of opportunities would certainly prejudice the interest of the other party to the suit, who is exposed to prolong litigation and expense. Thus, there has to be a stage when the Court must decline to grant further opportunity to the defaulting party to conclude its evidence."

Similar view has been taken by this Court in **Kaila Devi and Ors. v. State of Haryana** in C.M. No. 2726-CI of 1993 in RFA No. 459 of 1988, decided on 17.12.1998, which is as under:-

"Inherent powers cannot be used as an instrument to intrude the powers of the Court in regard to a procedure or a remedy, if specifically provided in other provisions of the Code. No code or law could be codified so as to provide for each and every situation, at every stage of the proceedings arising from the vacuum left in the enactment. Such situations are to be supplied by the Court by recourse to inherent powers to create a bridge over such situation for meeting the ends of justice or prevent abuse of process of law. To do justice is the primary duty of the Court but duty imposed should be

discharged in consonance with the provisions of the Code and within four corners of well enunciated principle, inherent powers being adjunct to the specifically provided powers of the Code as codified in the code. Thus they could not be used for disturbing the procedure provided under the Code because its ramification could prove retrograde to the administration of justice by Civil Court. Entertainment of such application would have the effect of infringing the concept of finality non-doctrine of civil jurisprudence."

As per provisions of Orders 16 and 18 of CPC, the intention of Legislature is to fairly conclude the evidence of the parties without unreasonably compromising the expeditious disposal of the suit. The Court may grant further time to the party to commence the evidence. In case of default, the Legislature has given specific powers to the Court under Order 17 Rule 3 of the Code for disposal of the suit or to proceed with the suit as the Court may deem fit and proper. These powers vested in the Court cannot be rendered ineffective or meaningless by granting indefinite adjournments for leading evidence by a party. Such approach is bound to decimate the very purpose of the Code i.e. to achieve the ends of justice and deliver expeditious decision in the cases. Accordingly, such provisions can neither be rendered ineffective nor taken to nadir so as to render provisions of Code as trivial.

The procedural law is enacted with the object of doing substantial justice between the parties. Its purpose is to determine the

dispute between the parties and provide finality to such determination. The intention is also to prevent multiplicity or frivolous litigation to achieve the object of the golden thread underlying the entire procedure prescribed under the Code. However, it is for the Court to determine, while exercising its discretion uniformly, by creating balance between the parties but such discretion is to be controlled by settled proposition of law keeping in view the facts and circumstances of each case.

Similar observation has been made by Hon'ble the Apex Court in case **State of Punjab and another vs. Shamlal Murari and another**, 1976 AIR (Supreme Court) 1177.

It has also been held by Hon'ble the Apex Court that rules of procedure are hand made of justice and the Courts should not deny the justice to the deserving litigant as it would lead to the miscarriage of justice. The procedural law is not to be tyrant but a servant, not an obstruction but an aid to the justice delivery mechanism and, therefore, a liberal approach is required to be taken while dealing with such matters.

For the reasons recorded above, the present petition is allowed and impugned order dated 16.12.2016 (Annexure P-2) is set aside. The trial Court is directed to grant one effective opportunity to the petitioners to produce the entire evidence. It shall be the responsibility of the petitioners to produce the entire evidence on the date fixed by the trial Court. However, the petitioners are burdened with costs of ₹10000/- to be paid to the opposite party.

February 17, 2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes