

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

**Civil Revision No.6171 of 2017
Date of Decision : 13.09.2017**

State Bank of India

....Appellant

versus

Balwinder Singh and Anr.

....Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Ashok Kumar Khunger, Advocate
for the appellant.

RAJBIR SEHRAWAT, JUDGE (ORAL)

Challenge in the present petition is to the order dated 02.01.2017 whereby the evidence of the petitioner/plaintiff was closed and the order dated 11.07.2017 whereby the application for recalling of that order has been dismissed by the trial Court.

Learned counsel for the petitioner-plaintiff has argued that on 24.10.2016 the entire evidence of the petitioner was present before the Court but only two witnesses were examined and the case was adjourned on that date. On next date i.e. on 21.11.2016 the petitioner-plaintiff witness was present but due to some reason the evidence could not be taken. It is further submission of the learned counsel for the petitioner that on the next date i.e. 02.01.2017 the Court was opening after the vacations and the counsel for the present petitioner was not available on that date, therefore, the witness brought by the petitioner could not be examined before the Court. The junior counsel had gone for making a prayer for adjournment. However, by that time the evidence had already been closed by the court.

Thereafter, the petitioner moved an application for recalling of

the order of closer of the evidence praying that the plaintiff wants to

examine only Sh. Janak Raj, Retired Officer of the Bank as a witness. Therefore, one opportunity was prayed for by the plaintiff.

However, the trial Court has dismissed the present application filed by the present petitioner-plaintiff on the ground that the petitioner should have approached the High Court in revision petition. The second ground given by the trial Court is that several opportunities have already been granted to the petitioner.

Learned counsel for the petitioner submits that the observation of the trial Court that the petitioner should have approached the High Court is not legally sustainable, in view of the judgement of this Court rendered in ***2013 (3) Civil Court Cases, 280, titled as Sanjay Kumar Vs. Vinod***, wherein this Court has already held that once order of closer of evidence is passed by the trial Court, the remedy which is available with the party is to move an application for recalling of the order of closer of the evidence. Such party need not rush to the High Court in revision petition.

A perusal of the judgement cited by the petitioner makes it clear that the appropriate remedy available to the present petitioner in such a situation is to move an application before the trial Court for recalling of the order and for granting him opportunity to lead the evidence required by him. However, the trial Court has wrongly distinguished the judgement of this Court and has dismissed the application filed by the present petitioner.

In view of the above, the impugned orders of the trial Court are set aside. The petitioner is granted one more opportunity to lead his evidence. However, it is made clear that the petitioner shall be granted only one effective opportunity at his own responsibility. The trial Court shall fix

the date for evidence of the petitioner-plaintiff after receipt of the certified copy of the present order. The revision petition is allowed in the above said terms.

13th September, 2017

Manju

**(RAJBIR SEHRAWAT)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No