

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

CR No.6629 of 2015 (O&M)
Date of decision: 14.09.2017

Mammudin @ Mamman

...Petitioner

Versus

Mahinder Singh Tokas (since deceased) through LRs and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Ms. Puja Chopra, Advocate for the petitioner.

None for the respondents.

REKHA MITTAL, J. (Oral)

The present petition directs challenge against order dated 19.09.2015 whereby evidence of the petitioner/defendant No.1 has been closed by order of Court.

Counsel for the petitioner has submitted that Mahinder Singh (since deceased) represented by his legal heirs and Rajiv Kumar filed suit for possession by way of specific performance of contract in the year 2011. The plaintiffs closed their evidence on 16.10.2012 and the case was adjourned to 06.12.2012 for evidence of the defendants. Counsel for the petitioner has fairly conceded that the case was adjourned on several occasions from 05.02.2013 to 26.10.2013 as well as in the year 2014 for evidence of the defendants but the petitioner did not appear in the witness

box for his statement. It is further submitted that as the petitioner filed an application for amendment of the written statement on 26.10.2013 but the same was dismissed by the trial Court on 04.09.2015, therefore, the petitioner may be allowed one opportunity to examine himself as a witness. It is further argued that a serious prejudice is likely to be caused to the petitioner in case he is not permitted to appear in the witness box to counter the averments raised in the plaint and evidence adduced by the plaintiffs to establish their claim for specific performance of agreement.

There is no representation on behalf of respondents No.2 to 5, who were earlier being represented by Mr. K.P. Singh, Advocate.

I have heard counsel for the petitioner, perused the paper book particularly various annexures appended with the petition.

The petitioner did not appear before the Court below for his examination on various dates i.e. 06.12.2012, 05.02.2013, 09.07.2013, 19.07.2013, 21.08.2013, 12.09.2013, 26.10.2013, 10.09.2015 and 19.09.2015. On 04.09.2015, the Court dismissed the application for amendment of written statement and the case was adjourned to 10.09.2015 for defendants' evidence with observation that it would be last opportunity. On 10.09.2015, no evidence of defendants was present but still the case was adjourned to 19.09.2015 subject to costs of Rs.500/- to be paid in the legal aid with stipulation that it would be last opportunity.

Counsel for the petitioner has altogether failed to point out any reason much less justifiable for failure of the petitioner to appear in the witness box on as many as 10 dates fixed for his evidence despite last

opportunity granted on two occasions. As the petitioner has failed to justify his absence from the proceedings for his examination, it can be safely held that the petitioner was trying to delay the proceedings filed by the respondents/plaintiffs seeking specific performance of agreement of sale. In view of the above, the petitioner does not deserve indulgence of discretionary jurisdiction of this Court.

For the foregoing reasons, the petition fails and is accordingly dismissed.

14.09.2017
ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No