

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

CR No.656 of 2017
Date of decision : 21.07.2017

Harvinder Singh

...Petitioner

Versus

Baljinder Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. M.K. Garg, Advocate for the petitioner.

Mr. Karanvir Singh Khehar, Advocate for respondent No.1.

ANIL KSHETARPAL, J.

The defendant No.2 has filed the present revision petition under Article 227 of the Constitution of India challenging the order dated 13.01.2017 (Annexure P-1) passed by the Civil Judge (Senior Division) Ludhiana dismissing the application filed by the defendant No.2 to recall the order dated 04.01.2008 and re-open the suit for recording the evidence.

The brief facts of the case are that the plaintiff filed a suit on 06.12.1995. After pretty long time, the plaintiff closed her evidence on 13.10.2006.

Thereafter the case was fixed for defendant's evidence. The zimni orders (daily orders) passed by the Court on 15.01.2007, 15.02.2007, 13.03.2007, 05.04.2007, 08.05.2007, 30.05.2007, 12.11.2007, 23.11.2007, 07.12.2007, 13.12.2007, and 04.01.2008 are extracted as under:-

“Present:- Counsel for the parties.

No evidence of defendant produced today. Be produced on 15.2.07 at own responsibility.

CJJD/Ldh/15.1.07

Present:- Counsel for the parties.

No Dws is present on request. The case is adjourned to 13/3/07 for DWs to be produced at own responsibility.

Sd/-

15.2.2007

Present:- Counsel for the parties.

No DW is present. Adjourned requested by counsel of the defendant which has been granted. Now to come upon 05.04.2007 for defendant evidence. For defendant evidence No.1 at his own responsibility.

CJJD/LDH

13.03.2007

Present:- Counsel for the parties.

No DW is present due to illness. Adjourned requested which has been granted by counsel. Now to come upon 08.05.2007 for defendant evidence. Subject to last opportunity as per previous order.

CJJD/LDH

05.04.2007

Present:- Counsel for the parties.

DW Babu Singh present and tendered his affidavit. Copy supplied. For cross-examination DWs is bound down for 30.05.2007.

CJJD/LDH

08.05.2007

Present:- Counsel for the parties.

No DW is present. Ld. Counsel for the defendant reported that defendant Babu Singh has expired. Now he wants to file application for impleading LRs of defendant

Babu Singh and request for adjournment, which is granted in the interest of justice. Case stands adjourned to 23.07.07 for filing application for impleading LR's of Babu Singh, if any.

CJJD/30.05.07

Present:- Counsel for the parties.

No DW is present. DWs be produced on 23.11.07 through last opportunity.

CJJD/12.11.07

Present:- Counsel for the parties.

No DW is present. DW be produced on 7.12.07.

CJJD/23.11.07

Present:- As above.

No DW is present. DWs be produced on 13.12.07 through last opportunity.

CJJD/7.12.07

Present:- As above.

No DW is present. Today was the last opportunity. Adjourning request by counsel for defendant. Perusal of file show that defendant has already availed numbers of opportunity to conclude his entire evidence but failed to conclude the evidence and counsel for defendant made statement that he will produce his entire evidence subject to last opportunity failing which evidence defendant shall deemed to be closed. Adj to 4.1.08 for DWs subject to last chance. No further opportunity.

CJJD/13.12.07

Present:- As above.

No DW is present. Today was the last opportunity the defendant to conclude his entire evidence but the defendant could not conclude his evidence. Adjournment request by the counsel for defendant which is opposed by the opposite party. The case relates the year 1995 and is old one. The

defendant has availed many opportunity including many last opportunities to the defendant but the defendant has failed to conclude his entire evidence. No ground is made out further adjourning the case the DWs. As such the evidence of the defendant is closed by order. Adjourn to 14.1.08 for rebuttal evidence it and for argument.

CJJD/4.1.08”

Thereafter the suit was fixed for arguments. The case was adjourned for final arguments on two occasions. It appears, thereafter an application under Order 6 Rule 17 CPC was filed seeking amendment of the plaint. Once again the case was adjourned on more than 10 occasions for consideration on the application seeking amendment of the plaint. Ultimately, on 28.01.2012, application for permission to amend the plaint was dismissed.

As per record, suit was dismissed in default vide order dated 20.09.2012. An application for restoration of the suit was filed and Civil Judge ordered restoration of the suit vide order dated 05.12.2016.

It is thereafter that the petitioner-defendant No.2 moved an application for recall of the order dated 04.01.2008. The learned Civil Judge after considering all aspects of the case dismissed the application filed by the defendant-petitioner vide order dated 13.01.2017 which has been impugned in the present revision petition.

Learned counsel for the petitioner has vehemently argued that the petitioner-defendant was not in knowledge of order dated 04.01.2008 closing the evidence of the defendants. Learned counsel has further submitted that the defendants came to know only after the case was restored

on 05.12.2016 when the plaintiff engaged a new counsel. Counsel for the petitioner has placed reliance on the judgment passed by the High Court reported as *2013(1) PLR 404, Santosh Kumar Berry Vs. Nirmala Devi and others*, to contend that the Court is competent to re-open the case and Court should be liberal in granting the opportunity to the parties to lead the evidence unless the conduct of the parties is contumacious or attempt to harass the other side by deliberate delays.

Whereas on the other hand, counsel for the respondent-plaintiff has submitted that the defendant was given more than sufficient opportunities to lead evidence. Counsel for the respondent has brought to the notice of this Court the zimni orders (daily orders) which have been extracted above and has submitted that as many as 11 opportunities were given to the defendants to lead evidence. However, the defendants did not produce any evidence on the file. Counsel for the plaintiff has further submitted that the defendant was given one full year to lead his evidence but defendant did not produce even a single witness during these 11 hearings.

As per the amendment brought in by the Legislature in proviso to Order 17 Rule 1, the parties should not be granted more than three opportunities to lead evidence in ordinary circumstances. However, this Rule has been interpreted by the Hon'ble Supreme Court of India that such Rule is not inflexible and in the appropriate cases and in the appropriate circumstances, the Courts can even grant more than three opportunities to the party to lead evidence.

However, as noticed above in this case, the Court granted the defendant-petitioner 11 opportunities. Therefore, the Court was justified in

passing the order on 04.01.2008.

Counsel for the respondent has further submitted that the defendant-petitioner was in knowledge of the order dated 04.01.2008 as the petitioner-defendant is a very vigilant litigant, litigating in various Courts. The defendant-petitioner was represented by counsel who kept on appearing in the Court even after 04.01.2008 till the suit was dismissed in default on 20.09.2012 i.e. for a period of four years and eight months. It has further been submitted that in the meantime the plaintiff had filed an application for amendment of the plaint which was contested and was ultimately dismissed. Counsel for the plaintiff-respondent has further brought to the notice of this Court that the petitioner was once again represented through counsel in Civil Revision No.1370 of 2012 decided by the High Court on 14.02.2013. The High Court had specifically recorded in its order dated 14.02.2013 that "both parties had concluded their evidence." Therefore, the plea setup by the defendant that he was not in knowledge of the order dated 04.01.2008 is factually incorrect.

Normally the parties should be granted opportunity to lead evidence and suit should not be decided without giving sufficient opportunity to lead evidence. The Courts have always been liberal in allowing the parties to lead evidence.

However, in the present case, the learned Court while passing the impugned order has held that the defendant-petitioner is not a simple villager. He is involved in various cases pending in the Court. Rather it has been mentioned that the defendant-petitioner is a 'habitual court bird' who is locked in multifarious litigations. The Court has also recorded that the

defendant-petitioner engages different counsel and he is well-versed with the Court proceedings.

I have considered the submissions made by the counsel for the parties.

In this case, in my opinion, the defendant-petitioner cannot be granted indulgence to re-open the case due to following reasons:-

1. The defendant-petitioner has been given even 11 opportunities to lead evidence which would be clear from the zimni orders (daily orders) reproduced above. The defendant-petitioner did not produce any evidence. The petitioner-defendant appears to be taking the litigation very casually.
2. It is clear from the zimni orders (daily orders) that on 13.12.2007, counsel representing the defendant made a statement that he will produce his entire evidence on the next date subject to last opportunity failing which the evidence of the defendant shall be deemed to be closed. Once the statement to this effect was made and on the next date i.e. on 04.01.2008, the defendant did not produce any evidence, the Court had no other option but for to close the evidence of the defendant.

A reading of the order dated 13.12.2007 clearly proves that on 13.12.2007, the Court had granted the adjournment only on the statement of learned counsel for the defendants, that if on the next date, he does not produce evidence, the evidence of the defendant shall be deemed to be closed. Since on 04.01.2008, no evidence was produced by the defendant-petitioner, therefore, as undertaken by the

counsel for the defendant, the evidence was ordered to be closed.

3. Still further, defendant-petitioner filed an application for recall after a period of nine years from the date of the order. No doubt, the suit was dismissed in default in 2012 and was restored in 2016. However, counsel for the defendant kept appearing in the Court and contested the application for amendment of the plaint, even after the order dated 04.01.2008. In other words, after the order dated 04.01.2008, the suit remain pending for more than four years and seven months. The defendant even did not chose to move an application.
4. Apart therefrom, it is clear that suit is pending in the First Court for more than 20 years.

In view of the conduct of the petitioner-defendant particularly when it has been found that the petitioner is not a simple villager but is a vigilant and active litigant involved in multifarious litigation, I do not find any ground to interfere with the order passed by the learned trial Court in exercise under Supervisory jurisdiction under Article 227 of the Constitution of India.

Accordingly, the present revision petition is dismissed.

21.07.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No