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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.7975 of 2017

Date of Decision : 21.11.2017

MOHAMMAD SHARIF

....PETITIONER

VERSUS

AZHAR ALI AND ANOTHER

....RESPONDENTS

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Jai Bhagwan, Advocate for the petitioner.

B. S. WALIA, JUDGE (ORAL)

[1] Petitioner has challenged order dated 11.08.2017 i.e. Annexure P-2, passed by the learned Civil Judge (Jr. Divn.), Malerkotla, whereby evidence of the plaintiff-petitioner has been closed by order.

[2] Brief facts of the case, leading to the filing of the present petition are that the case was fixed for evidence of the plaintiff-petitioner on 03.01.2017 on which date, one PW-Mohd. Asgar was present but could not be cross-examined as learned counsel for the defendants requested for a date. Thereupon the case was adjourned to 24.01.2017 for cross-examination of PW-Mohd. Asgar. On the next date i.e. 24.01.2017, PW-Jarnail Singh, Draftsman and PW-3-Mohd. Asgar were present and were examined and the case was adjourned to 15.02.2017 for evidence of remaining PWs. On 15.02.2017, no PW was present whereupon the Court recorded that numerous opportunities had been availed by the plaintiff but he had failed to conclude his evidence. The

case was adjourned to 23.02.2017 for evidence of remaining PWs, subject to payment of Rs.200/- as cost. On the next date i.e. 23.02.2017, PW-4-Mohd. Sharif was present and was examined-in-Chief, however, his cross-examination was deferred on the request of counsel for the defendants and the case was adjourned to 28.03.2017 for cross-examination of PW-Mohd. Sharif and for remaining evidence of plaintiff. On 28.03.2017, PW-4-Mohd. Sharif was present and cross-examined partly, however his further cross-examination was deferred since Court time was over. The case was therefore adjourned to 24.04.2017 for further cross-examination of PW-Mohd. Sharif and for remaining evidence of plaintiff.

[3] On 24.04.2017, case was adjourned to 15.05.2017 on request of learned counsel for the plaintiff for remaining evidence of plaintiff by his suffering a statement that he would conclude the evidence on the next date of hearing, failing which he had no objection if his evidence was closed by order. On 15.05.2017, one PW was present but could not be examined, therefore, he was bound down for 26.05.2017 and on request, case was adjourned to 26.05.2017 for remaining evidence of the plaintiff. On 26.05.2017, no PW was present, therefore, on the request of counsel for the plaintiff, it was adjourned to 01.08.2017 for evidence of the plaintiff, subject to last opportunity. On 01.08.2017, again no PW was present and again on request of counsel for the plaintiff, case was adjourned to 11.08.2017 for plaintiff's witnesses, subject to last opportunity. Again on 11.08.2017, no PW was present whereupon plaintiff's evidence was closed by order and the case was adjourned to

27.09.2017 for DWs.

[4] Aggrieved against the order dated 11.08.2017 i.e. Annexure P-2 passed by the learned Civil Judge (Jr. Divn.), Malerkotla, instant revision petition has been filed under Article 227 of the Constitution of India. The only submission of learned counsel for the petitioner is that the plaintiff's witnesses were not available on the day when the impugned order was passed, therefore, their cross-examination could not be conducted.

[5] A perusal of the impugned order reveals that sufficient opportunity was granted to the plaintiff-petitioner and it was only thereafter that the Court passed the impugned order, closing the evidence of the plaintiff and directed the defendants to produce their evidence. In the circumstances, I do not find any infirmity with the order, passed by the learned trial Court. However, if plaintiff has any justification for not having been able to produce the evidence leading to passing of the impugned order, the plaintiff would be at liberty to move an appropriate application before the learned trial Court for recall of the witness who could not be further cross-examined by setting out the reasons as to why the said witness could not be produced in the Court on the date fixed for his further cross-examination. Needless to mention if the learned trial Court finds that the explanation put forth by the plaintiff for not being able to produce the witness on the date fixed is justifiable, then it would be open to the learned trial Court to pass an appropriate order for recalling the said witness for further cross-examination in accordance with law and if need be by imposing costs as deemed appropriate in the

facts and circumstances of the case.

[6] Revision petition is dismissed *in limine* with the
aforementioned liberty.

(B. S. WALIA)
JUDGE

November 21, 2017
rajneesh

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No