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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.7997 of 2017 (O&M)

Date of Decision : 15.11.2017

KASHMIR SINGH AND OTHERS

....PETITIONERS

VERSUS

BALBIR SINGH

....RESPONDENT

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

Present: Mr. Kamaljit Singh Dhillon, Advocate
for the petitioners.

B.S. WALIA, JUDGE (ORAL)

[1] Revision petition has been filed under Article 227 of the Constitution of India, praying for the setting aside of order dated 30.10.2017 (Annexure P-3) passed by the learned Civil Judge (Jr. Divn.), Jalandhar in Civil Suit titled as '*Balbir Singh versus Kashmir Singh and others*' whereby the defendants evidence was closed by order. Prayer is for setting aside the said order and for granting of one opportunity to the petitioners to lead his evidence.

[2] Brief facts of the case leading to the filing of the instant revision petition are that a total of 10 opportunities were availed by the defendants/petitioners for leading defence evidence. On 20.09.2017, two defendants' witnesses were examined out of whom DW-1 was cross-examined on 03.10.2017 by learned counsel for the plaintiff/respondent.

Thereafter, the case was fixed for 12.10.2017 for cross-examination and

for defendants evidence of DW-2 and remaining defendant evidence. However, on 12.10.2017, no DW was present. Therefore, the case was adjourned to 23.10.2017 for cross-examination of DW-2 and for defendants evidence. Again, on 23.10.2017, no DW was present. Thereafter, the case was adjourned to 30.10.2017 and on the said date also, no DW was present. Thus, in all, number of opportunities were availed by the defendants but as has been noted above, the DWs were not present on any of the dates, leading to the passing of the impugned order by the learned Civil Judge (Jr. Divn.), Jalandhar, in the light of decision of the Hon'ble Supreme Court in 'M/s Shiv Cotex versus Tirgun Auto Plast Private Limited', 2011 (4) RCR (Civil) 807. Relevant extract of aforesaid decision has been reproduced in the order of the learned trial Court. As per decision of the Hon'ble Supreme Court in 'M/s Shiv Cotex versus Tirgun Auto Plast Private Limited', (supra), a party to the suit is not at liberty to proceed with the trial at its pleasure and has no right to determine when the evidence would be led by it and when the matter should be heard and the parties to a suit must co-operate in the Court for ensuring that effective work is done on the date of hearing, for which the matter has been fixed and if the parties choose not to do they would do so at their own peril.

[3] Despite a number of opportunities having been availed earlier, defendants/petitioners did not ensure presence of DWs on a number of dates. Resultantly, the learned Civil Judge (Jr. Divn.), Jalandhar, closed the defendants evidence by order. No fault can be found with the order of the learned Civil Judge (Jr. Divn.), Jalandhar. At this stage, learned

counsel for the petitioners pleaded that an irreparable loss would be caused to the petitioners if one opportunity is not granted to the defendants/petitioners to lead their evidence. Having considered the submission, it is deemed appropriate to observe that it would be open to the petitioners to avail of the remedy as may be available to them, in accordance with law, before the learned trial Court.

[4] Dismissed with the aforementioned observations.

(B.S. WALIA)
JUDGE

November 15, 2017
rajneesh

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