

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

**C. R No. 8355 of 2017 (O&M)
Date of decision : 07.12.2017**

Gurdeep Singh

....Petitioner

versus

Jagjit Kaur and ors.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Pankaj Bali, Advocate
for the petitioner.

RITU BAHRI, J. (Oral)

Challenge in this petition is to order dated 08.11.2017 passed by learned Civil Judge (Jr. Divn.), Payal whereby the application dated 16.10.2017 for file inspection and taking of the photographs by the handwriting and finger print experts from the case file, has been dismissed.

A perusal of the impugned order shows that initially on 23.08.2017, the evidence of the plaintiff was closed, subsequently, vide order dated 13.09.2017, this order was recalled and the petitioner-plaintiff was granted an opportunity to get himself cross examined. However, he was not granted permission to lead any other evidence. The petitioner-plaintiff has filed suit for declaration on the basis of will dated 14.10.1994 and is claiming that he has become owner of the share of Bachan Singh in the joint land as described in the plaint.

To prove the will, out of two attesting witness, one died and other turned hostile and in this background, he is wanting to get the report of the handwriting expert.

Learned counsel has referred to the judgment of this Court in a case of ***Sakinder Kaur vs. Bahadur Singh and others, 2017(3) RCR (Civil) 592*** wherein it was held that the evidence required to be adduced by the petitioner was necessary for just decision of the case. A great injustice would be caused, in case the same is not allowed. No prejudice is going to be caused to the other party. In para 13 and 14, it has been observed as under:-

*“13. Similar observation has been made by Hon'ble the Apex Court in case **State of Punjab and another vs. Shamlal Murari and another, 1976 AIR (Supreme Court) 1177.***

14. No doubt, the petitioner was granted opportunities but she could not adduce her evidence. There is nothing on record to show as to whether the cost was imposed for not producing her evidence from time to time. Trial Court would have cautioned the petitioner that in case the evidence was not produced, the same would be closed. The order closing the evidence of a party has got far reaching consequences. The main object of the Court is to do substantial justice. The procedural wrangles cannot be allowed to stay in the way of grant of substantial justice. A procedural rule has to be liberally construed and care must be taken so that the technicality may not hamper in the administration of justice. To do justice, sometimes technicalities are to be ignored. If the breach can be corrected, without injury to a just disposal of the case, the Court should not enthrone a regulatory requirement into a dominant desideratum. Accordingly, in the larger interest of the justice, the reasonable opportunity is required to be granted to the party to lead his evidence and for that, opposite party can be compensated by way of costs.”

In view of the above factual position, order dated 08.11.2017 passed by learned Civil Judge (Jr. Divn.), Payal is hereby set aside and the

instant revision petition is ***allowed*** and the trial Court is directed to allow the application of the petitioner, subject to deposit of cost of Rs.5000/- to be paid before the District State Legal Service Authority, Ludhiana.

07.12.2017

(RITU BAHRI)
JUDGE

G.Arora

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>