

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

Civil Revision No.8380 of 2017

Date of decision : 04.12.2017

Gurcharan Kaur

..... Petitioner

versus

Tarlok Singh and others

..... Respondents

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

Present: Mr.Sandeep K.Sharma, Advocate for the petitioner.

B.S.WALIA, J. (Oral)

1. Challenge is to order dated 31.08.2017 passed by the learned trial Court vide which evidence of the plaintiff-petitioner was closed by Court order.

2. A perusal of the impugned order dated 31.08.2017 reveals that the learned trial Court, while taking into account that issues were framed in the case on 07.04.2015 but plaintiff had failed to conclude her evidence despite on the last date of hearing having undertaken to conclude entire evidence, ordered closure of her evidence and adjourned the case to 27.09.2017 for evidence of the defendant.

3. Learned counsel for the plaintiff-petitioner contends that although the case had been listed on 23 different dates, yet on 10 dates the matter had been adjourned on account of no fault of the plaintiff-petitioner i.e. on account of strikes, adjournment sought by defendant-respondent's counsel, learned Presiding Officer of the court being on leave etc. while on

about 6/7 dates, application under Order 1 Rule 10 of the CPC was listed and the case had been adjourned for reply as well as evidence of plaintiff's witnesses and the plaintiff had actually got about six effective opportunities for leading evidence and had examined two witnesses who had also been cross-examined. Learned counsel relies upon zimni order dated 28.07.2017 to contend that PW-Kuldeep Singh was present on the said date but could not be examined as the District Bar Association, Rupnagar had decided to observe No Work in protest of imposition of professional tax as per call given by different Bar Associations whereupon said Kuldeep Singh was bound down for the next date of hearing i.e. 14.08.2017 as also for entire plaintiff's evidence at her own responsibility as last and final opportunity, failing which the plaintiff-petitioner was cautioned that the evidence of the plaintiff would be closed. Learned counsel further contends that summons were issued to plaintiff's witnesses on 29.07.2017 but as per note on the zimni order at page No. 71 of the paper book, summons issued to the witnesses had not been received back. Learned counsel contends that on 14.08.2017 after taking note of the fact that summons issued to plaintiff's witnesses (wrongly recorded as defendant's witnesses) had not been received back, fresh summons were issued to plaintiff's witnesses (wrongly recorded as defendant's witnesses) for 31.08.2017 through ordinary process along with dasti summons at own responsibility of plaintiff while observing that it would be the last and final opportunity failing which plaintiff's evidence would be closed. On the next date i.e. 31.08.2017, PW-Kuldeep Singh was present for cross-examination and was accordingly cross-examined by the empaneled local commissioner in terms of Order 18 Rule 4(2) of the CPC but since no other witness was present, learned trial Court closed the

evidence of the plaintiff by Court order. Learned counsel contends that once summons had been issued to the plaintiff's witnesses and they had failed to put in appearance, then no fault could be attributed to the plaintiff-petitioner and in such circumstances it was the duty of the learned trial Court to have taken recourse to the provisions of Order 16 Rules 10 and 12 of the CPC. Order 16 Rules 10 and 12 of the CPC are reproduced hereunder:-

“10. Procedure where witness fails to comply with summons.-

(1) Where a person to whom a summons has been issued either to attend to give evidence or to produce a document, fails to attend or to produce the document in compliance with such summons, the court—

(a) shall, if the certificate of the serving officer has not been verified by affidavit, or if service of the summons has been effected by a party or his agent, or

(b) may, if the certificate of the serving officer has been so verified, examine on oath the serving officer or the party or his agent, as the case may be, who has effected service, or cause him to be so examined by any court, touching the service or non-service of the summons.

(2) Where the court sees reason to believe that such evidence or production is material, and that such person has, without lawful excuse, failed to attend or produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named, therein; and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.

(3) In lieu of or at the time of issuing such proclamation, or at any time afterwards, the Court may, in its discretion, issue a warrant, either with or without bail, for the arrest of such person, and may make an Order for the attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of attachment and of any fine which may be imposed under Rule 12:

Provided that no Court of Small Causes shall make an order for the attachment of immovable property.

12. Procedure If witness fails to appear.- (1) The Court may,

where such person does not appear, or appears but fails so to satisfy the Court, impose upon him such fine not exceeding five hundred rupees as it thinks fit, having regard to his condition in life and all the circumstances of the case, and may order his property, or any part thereof, to be attached and sold or, if already attached under Rule 10, to be sold for the purpose of satisfying all costs of such attachment, together with the amount of the said fine, if any:

Provided that, if the person whose attendance is required pays into Court the costs and fine aforesaid, the Court shall order the property to be released from attachment.

(2) Notwithstanding that the Court has not issued a proclamation under sub-rule (2) of Rule 10, nor issued a warrant nor ordered attachment under sub-rule(3) of that rule, the Court may impose fine under sub-rule (1) of this rule after giving notice to such person to show cause why the fine should not be imposed.”

4. Admittedly summons had been issued to the plaintiff's witnesses.

However, the witnesses failed to put in appearance despite having been served summons. In the circumstances the learned trial Court was required to take action to compel the presence of the plaintiff's witnesses in accordance with the procedure stipulated in the aforementioned Rules 10 and 12 of Order 16 of the CPC. Having failed to do so, the plaintiff-petitioner could not have been deprived of the opportunity to lead evidence. Even assuming that the plaintiff could not have led the evidence even otherwise, then in that eventuality, at least one opportunity ought to have been granted by the learned trial Court by imposing costs. Learned counsel has also relied upon the decision of this Court in case titled as **Sakinder Kaur vs. Bahadur Singh and others**, 2017(3) RCR(C) 592 in support of the plea for grant of one opportunity for producing entire plaintiff's evidence at her own risk and responsibility. Relevant extract of the same is reproduced as under:-

“ 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.”

Equally relevant is the observation of the Hon'ble Coordinate Bench in paragraph 12 of its judgment which is reproduced as under:-

“12. The procedural law is enacted with the object of doing substantial justice between the parties. Its purpose is to determine the dispute between the parties and provide finality to such determination. The intention is also to prevent multiplicity or frivolous litigation to achieve the object of the golden thread underlying the entire procedure prescribed under the Code. However, it is for the Court to determine, while exercising its discretion uniformly, by creating balance between the parties but such discretion is to be controlled by settled preposition of law keeping in view the facts and circumstances of each case.”

Accordingly, in the light of the position as noted above and

without resorting to the process of issuing notice to the respondent-defendant since the same would only delay the proceedings before the learned trial Court besides would entail unnecessary expenses having to be incurred, the revision petition is allowed, impugned order dated 31.08.2017 closing the evidence of the plaintiff is set aside and learned trial Court is directed to give one effective opportunity to the plaintiff-petitioner to conclude her evidence on the said date subject to payment of costs of Rs. 10,000/- to be paid to the respondent-defendant. It is made clear that in case the plaintiff-petitioner fails to conclude her evidence on the one effective opportunity granted by the learned trial Court, then in that eventuality the plaintiff-petitioner shall not be entitled to any further opportunity and the case shall be taken to its logical end in accordance with law as expeditiously as possible.

5. Revision petition allowed in the aforementioned terms.

(B. S.WALIA)
JUDGE

04.12.2017
sunita

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No