

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

**C.R. No. 848 of 2017
Date of Decision:- 07.02.2017**

Prem Lata

...Petitioner

vs.

Om Parkash @ Om Singh and others

...Respondents

CORAM:- HON'BLE MRS. JUSTICE DAYACHAUDHARY

Present:- Mr. Amit Jain, Advocate,
for the petitioner.

DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 21.01.2017 (Annexure P-1) passed by learned Civil Judge (Junior Division), Mohindergarh, whereby, the evidence of the petitioner/defendant No. 6 has been closed without affording a reasonable and adequate opportunity to lead evidence.

Briefly facts of the case are that plaintiff-respondents filed a suit for declaration along with consequential relief of permanent injunction against petitioner-defendant No. 6 and others, wherein issues were framed on 27.11.2015 and it was adjourned for plaintiff's evidence, which was closed by Court order on 28.7.2016. On 21.1.2017, learned trial Court closed evidence of petitioner/defendant No.6 on the ground that five effective opportunities including one last opportunity for leading entire evidence were given but same was not completed. Ultimately, the defence

evidence was closed by Court order which is subject-matter of challenge in the present revision petition.

Learned counsel for the petitioner submits that adequate opportunities were not granted to the petitioner and great injustice would be caused as it would be an extreme penalty adversely affecting substantial justice to the petitioner. Learned counsel also submits that production of evidence is necessary to decide the real controversy between the parties. The impugned order has been passed without considering the facts and circumstances of the case and without applying judicious mind which will cause irreparable loss and injury to the petitioner. At the end, learned counsel for the petitioner submits that the petitioner would complete his entire evidence within one effective opportunity and is also ready to compensate the party opposite.

Heard arguments of learned counsel for the petitioner and have also perused the zimni orders as well as impugned order dated 21.1.2017.

Without issuing notice to the other party as it will not only prolong the case but will unnecessary burden with the expenses, the case is being decided.

It is a settled preposition of law that scope of exercise of judicial discretion to achieve the ends of justice, in furtherance to the provisions of Code of Civil Procedure is the basic question which deserves consideration in the present case. A limited prayer has been made by learned counsel for the petitioner, while challenging the impugned order dated 21.1.2017, that the petitioner be granted one effective opportunity to lead evidence as adequate opportunities were not granted and his evidence

was closed by Court order. On perusal of impugned order, it is found that simply it has been mentioned that the case is pending for defendant's evidence who had already availed five effective opportunities including one last opportunity for leading and concluding its entire evidence but it was not completed. Speedy trial is fundamental right of the litigants and no good ground is made out to linger on the case for evidence of defence and as such the defence evidence was closed by Court order. The learned trial Court ought to have granted one more opportunity to lead evidence and ought not to have passed the order closing the evidence of the plaintiff.

In case **Joginder Singh and others vs. Smt. Manjit Kaur**, 2000 (2) RCR (Civil) 382, this Court has observed as under:-

“3. Should such discretion by the Court can ever be termed as "uncontrolled and un-guided exercise of judicial discretion by the Court? "I have no hesitation in answering the above question in the negative. Certainly, it is not possible for the Court to provide the panacea to all problems arising at different stages of the suit. The Code of Civil Procedure is a comprehensive code and the different stages of a suit are controlled and regulated by various checks and limitations provided in the Code. The pious wish of the legislation for expeditious disposal of the suit runs like a golden thread in the various provisions of the Code. The inherent powers vested in the Court under section 151 of the C.P.C. are of very wide magnitude, but are certainly controlled by self restraints

and restrict exercise of such powers depending on merit of each case. The Court is under an implied obligation to balance the equities between the parties to a suit to achieve the ends of justice, which is the basic paramount object of the Code. The equities would demand that power under the provisions of the Code or the inherent powers should be exercised by the Court to correct imbalances or inequities resulting from unnecessary adjournments, between the parties. As a result of fault of one party to the suit, the other is certainly put to inconvenience or unnecessary harassment. Delay in conclusion, of "proceedings again is a factor of vital importance, as such, uncontrolled opportunity to a party to conclude its evidence in any number of opportunities would certainly prejudice the interest of the other party to the suit, who is exposed to prolong litigation and expense. Thus, there has to be a stage when the Court must decline to grant further opportunity to the defaulting party to conclude its evidence."

Similar view has been taken by this Court in **Kaila Devi and others vs. State of Haryana** in **C.M. No. 2726-CI of 1993** in **RFA No. 459 of 1988**, decided on 17.12.1998, which is as under:-

"Inherent powers cannot be used as an instrument to intrude the powers of the Court in regard to a procedure

or a remedy, if specifically provided in other provisions of the Code. No code or law could be codified so as to provide for each and every situation, at every stage of the proceedings arising from the vacuum left in the enactment. Such situations are to be supplied by the Court by recourse to inherent powers to create a bridge over such situation for meeting the ends of justice or prevent abuse of process of law. To do justice is the primary duty of the Court but duty imposed should be discharged in consonance with the provisions of the Code and within four corners of well enunciated principle, inherent powers being adjunct to the specifically provided powers of the Code as codified in the code. Thus they could not be used for disturbing the procedure provided under the Code because its ramification could prove retrograde to the administration of justice by Civil Court. Entertainment of such application would have the effect of infringing the concept of finality non-doctrine of civil jurisprudence."

As per provisions of Orders 16 and 18 of CPC, the intention of Legislature is to fairly conclude the evidence of the parties without unreasonably compromising the expeditious disposal of the suit. The Court may grant further time to the party to commence the evidence. In case of default, the Legislature has given specific powers to the Court under Order

17 Rule 3 of the Code for disposal of the suit or to proceed with the suit as the Court may deem fit and proper. These powers vested in the Court cannot be rendered ineffective or meaningless by granting indefinite adjournments for leading evidence by a party. Such approach is bound to decimate the very purpose of the Code i.e. to achieve the ends of justice and deliver expeditious decision in the cases. Accordingly, such provisions can neither be rendered ineffective nor taken to nadir so as to render provisions of Code as trivial.

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.

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.

No doubt, the petitioner was granted opportunities but he could not adduce his evidence. There is nothing on record to show as to whether the cost was imposed for not producing his evidence from time to time. 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. In the present case, sufficient opportunity was granted but still petitioner could not adduce his evidence within those available opportunities. 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.

For the reasons recorded above, the revision petition is allowed. Impugned order dated 21.1.2017 (Annexure P-1) is set aside. The trial Court is directed to grant one effective opportunity to petitioner to produce the entire evidence. It shall be the responsibility of the petitioner to produce the entire evidence on the date fixed by the trial Court. However, the revision petitioner is burdened with costs of ₹ 10,000/- for causing delay which shall be paid to the opposite party.

February 07, 2017
poonam

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes