Pooja Sharma
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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No. 908 of 2017 (O&M)

DATE OF DECISION:02.03.2017

Hardeep Singh .....Petitioner

Versus

Gursharan Singh .....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. R.S. Pandher, Advocate
for the petitioner.

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DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 27.5.2016 passed by Civil Judge (Junior Division), SAS Nagar, Mohali, whereby, the evidence of the petitioner-plaintiff has been closed by the order of Court.

Briefly, the facts of the case are that the petitioner-plaintiff filed a suit for recovery of an amount of ₹2,03,806/- against the respondent-defendant along with interest at the rate of 12% per annum. Written statement to the suit was filed and thereafter issues were framed. The petitioner-plaintiff adduced his evidence on 7.1.2016 and thereafter he tendered his evidence on 27.1.2016 and was cross-examined on 23.2.2016. He could not conclude his evidence despite two opportunities given to him

and his evidence was ultimately closed by the order of Court on 27.5.2016 on the ground that he was given various opportunities but he could not adduce his entire evidence. Order dated 27.5.2016, whereby the evidence of petitioner-plaintiff has been closed by the order of the Court, is subject matter of challenge in the present revision petition.

Learned counsel for the petitioner contends that the first opportunity was given to the petitioner-plaintiff on 7.1.2016 and thereafter he tendered his evidence on 27.1.2016 and was cross-examined on 23.2.2016. Learned counsel further contends that on 27.5.2016, the petitioner-plaintiff and his witness were present before the trial Court but still their evidence was closed by the order of the Court and it could not come to their notice. Thereafter on 1.8.2016, the petitioner-plaintiff along with the witness came to the trial Court and on that date it came to his knowledge that his evidence has already been closed by the order of Court on 27.5.2016. The petitioner-plaintiff made an application on 17.8.2016 for permission to produce material witness before the trial Court but the same was also dismissed on 22.8.2016. Learned counsel also contends that even an appeal filed by the petitioner-plaintiff against order dated 22.8.2016 was subsequently withdrawn on 27.9.2016 as the remedy of revision was available. At the end, learned counsel submits that PW-2 Hari Singh is the material witness in the case and his evidence is necessary for proper adjudication of the suit for recovery and one effective opportunity be granted to the petitioner so that he may conclude his evidence on one date.

Heard the arguments advanced by learned counsel for the petitioner and have also gone through the impugned order dated 27.5.2016 and other documents available on the file.

Facts relating to filing of suit, closing of evidence and passing of impugned order are not disputed. I have also perused the zimni orders, which are on record. A perusal of zimni orders shows that on 27.1.2016, PW-1 had tendered into evidence his duly sworn affidavit Ex. P-1 and his cross-examination was deferred for 19.2.2016. PW-1 was present for cross-examination on the date fixed i.e. 19.2.2016 but on the request made by counsel for the defendant, the case was adjourned to 23.2.2016. On that date also witness was present but the file was sent to Empanelled Court Commissioner Sh. Anil Kumar, Advocate for recording cross-examination of the witness on payment of ₹200/- per witness and accordingly cross-examination of PW-1 was also recorded. Thereafter the case was adjourned to 14.3.2016 for remaining evidence of the plaintiff but on that day no plaintiff witness was present and the case was first adjourned to 17.4.2016 and then to 16.5.2016 being Sunday. On two dates i.e. 16.5.2016 and 27.5.2016, no PW was present and thereafter on 18.7.2016 PW-2 tendered into evidence his duly sworn affidavit and his cross-examination was deferred on request of counsel for the defendant for 1.8.2016. The following order was passed on 1.8.2016:-

> "Inadvertenly on the last date PW2 has tendered into evidence his affidavit, whereas, the evidence of the plaintiff stood closed on 27.5.2016. NO evidence of the defendant is present today. Adjourned to 17.8.2016. Affidavit tendered PW2 is not liable to read in evidence in view of the order dated 27.5.2016."

It is clear from order dated 1.8.2016 that even the trial Court has observed that inadvertently on the last date PW-2 had tendered his affidavit in evidence, whereas, the evidence of the plaintiff stood closed on

27.5.2016.

A perusal of zimni orders as well as submissions made by learned counsel for the petitioner clearly shows that the witness PW-2 Hari Singh is required to be examined being material witness for proper adjudication of the suit for recovery.

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

It is a settled preposition of law that the scope of exercise of judicial discretion is to achieve the ends of justice, in furtherance to the provisions of Code of Civil Procedure. A limited prayer has been made by the learned counsel for the petitioner, while challenging the impugned order dated 27.5.2016, that the petitioner be granted one effective opportunity to lead his evidence so that he can produce all the evidence on that date. Undoubtedly, speedy trial is fundamental right of the litigants and no ground is made out to linger on the case for evidence of defendants or plaintiffs. The learned trial Court should have been granted one more opportunity to lead evidence before passing of oder of closing of evidence.

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 Ors. v. 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 retrogative 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 proposition 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.

It has also been held by Hon'ble the Apex Court that rules of procedure are hand mades of justice and the Courts should not deny the justice to the deserving litigant as it would lead to the miscarriage of justice. The procedural law is not to be tyrant but a servant, not an obstruction but an aid to the justice delivery mechanism and, therefore, a liberal approach is required to be taken while dealing with such matters.

For the reasons recorded above, the present petition is allowed and impugned order dated 27.5.2016 (Annexure P-1) is set aside. The trial Court is directed to grant one effective opportunity to the petitioner to examine PW-2 Hari Singh. It shall be the responsibility of the petitioner to produce PW-2 Hari Singh on the date fixed by the trial Court. However, the petitioner is burdened with costs of ₹5000/- to be paid to the opposite party.

March 02, 2017 **(DAYA CHAUDHARY)**
pooja **JUDGE**

Whether speaking/reasoned Yes
Whether reportable Yes