

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Civil Revision No.1243 of 2018

Date of Decision: 22.02.2018

Balbir Singh

....Petitioner (s)

Versus

Tarsem Kaur & others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Sunny K. Singla, Advocate
for the petitioner(s).

HARI PAL VERMA, J. (Oral)

Petitioner-plaintiff has filed the present revision petition under Article 227 of the Constitution of India for setting aside the order dated 09.11.2017 (Annexure P-4) passed by Civil Judge (Jr. Division), Malerkotla, whereby the evidence of the petitioner-plaintiff has been closed by order.

Learned counsel for the petitioner has argued that the petitioner-plaintiff has filed a suit for declaration and permanent injunction against the respondent-defendants on 19.11.2014. Accordingly, issues were framed on 20.07.2016. While making reference to various zimni orders passed by the civil court, so reproduced in paragraph 6 of this revision petition, learned counsel has argued that no doubt, various opportunities have been granted to the petitioner-plaintiff to conclude the evidence but at

the same time, at number of occasions, the case was adjourned at the request of counsel for the respondent-defendant so as to cross-examine the plaintiff/witnesses. He has further argued that none of the witnesses of the respondent-defendant has been cross-examined so far. In fact, evidence of the respondent-defendant has not effectively started. So far as evidence of the petitioner-plaintiff is concerned, the petitioner has appeared as PW-5 and has submitted his evidence by way of affidavit (examination-in-chief) and is required to be cross-examined. But it is at this stage, the evidence has been closed and thus, great prejudice will be caused to the petitioner-plaintiff in case he is not cross-examined, as in absence of cross-examination, evidence of the petitioner-plaintiff will not be read in evidence.

I have heard learned counsel for the petitioner and perused the impugned order.

The record reveals that ample opportunities have been granted to the petitioner-plaintiff to complete his evidence and getting himself cross-examined. The order dated 09.11.2017 passed by the civil court reads as under:-

“Perusal of file shows that in the present case issues were framed on 20.07.2016 and case was adjourned to evidence of plaintiff. Thereafter, plaintiff took sufficient opportunities but did not conclude entire evidence. So, no ground is made out to further adjourn the case for evidence of plaintiff. As such, evidence of plaintiff is closed by order. On request of ld. counsel for defendant, case is adjourned to 27.11.2017 for evidence of defendants. PF/DM and list of witnesses, if any, be filed within three days.”

The suit was filed on 19.11.2014 and the issues were framed on 20.07.2016. Considering the fact that the suit was by the petitioner-plaintiff and he is not expected to delay its proceedings, coupled with the fact that the evidence of respondent-defendant has not virtually been started, as the defendant has not been examined so far, this Court finds that let one opportunity be granted to the petitioner-plaintiff to get himself cross-examined, however, subject to payment of costs.

Accordingly, the present revision petition is allowed. The order dated 09.11.2017 (Annexure P-4), whereby evidence was closed, is set aside and the trial Court is directed to afford one more effective opportunity to the petitioner-plaintiff to get himself cross-examined so that his evidence could be read into evidence. However, this opportunity shall be subject to payment of costs of Rs.5,000/-, which shall be paid the respondent no.1-defendant.

The present petition has been disposed of, at this stage, without issuing any notice to the respondents for the reason that in case notice is issued to the respondents, it will further delay the proceedings. Still, in case the respondents feel prejudice by this order, they are at liberty to file an application for recalling of this order under intimation to the trial Court and before the utilization of opportunity so allowed.

February 22, 2018
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No