

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

Civil Revision No.125 of 2018.
Decided on:-January 11, 2018.

Intop Project and another.

.....Petitioners.

Versus

Sheela Stainless Private Limited.

.....Respondent.

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

Present:- Mr. Manoj Sharma, Advocate
for the petitioners.

Mr. Jainainder Saini, Advocate
for the respondent.

HARI PAL VERMA, J.

Prayer in this petition filed under Article 227 of the Constitution of India is to set aside the order dated 05.01.2018 (Annexure P-1) passed by learned Additional Civil Judge (Senior Division), Hisar, whereby the evidence of the petitioner-defendants has been closed by court order.

Learned counsel for the petitioner has squarely submitted that the petitioners be granted two effective opportunities to conclude their evidence.

Memo of appearance filed on behalf of learned counsel for the respondent is taken on record.

The respondent-plaintiff has filed a suit for recovery of Rs.36,05,983/- against the petitioner-defendants. The suit was filed on 04.01.2017 and the written statement thereof was filed on 09.05.2017.

Thereafter, issues were framed on 22.05.2017 and the case was adjourned to 19.07.2017 for evidence of the plaintiff. On 19.07.2017, two witnesses of the plaintiff were present, but they could not be examined as counsel for both the parties did not turn up and the case was adjourned to 09.08.2017 for evidence of the plaintiff. On 09.08.2017, one PW was examined and another PW was examined partly and his cross-examination was deferred. The case was adjourned to 18.08.2017, 30.08.2017 and 11.10.2017 and on 26.10.2017, the counsel for the plaintiff had closed the evidence of the plaintiff and the case was adjourned to 13.11.2017 for evidence of the defendants. However, on 13.11.2017, both the parties had submitted before the Court that there are chances of compromise between the parties and they requested that the matter be referred to the Mediation Centre. The parties appeared before the Mediation Centre on 18.11.2017, but the matter could not be compromised. Hence, the case was again listed before the civil Court on 21.11.2017, but as no evidence of the defendants was present, the case was adjourned to 29.11.2017 for evidence of the defendants. On 29.11.2017, no evidence of the defendants was present and the case was adjourned to 13.12.2017 for evidence of the defendants. and last opportunity was granted to the defendants. On 13.12.2017, though no evidence of the defendants was present, but as counsel for both the parties stated that there are chances of compromise between the parties, the case was adjourned to 05.01.2018 for compromise, otherwise for evidence of the defendants at their own responsibility. It was made clear that in case the defendants fail to produce their evidence, the same shall be deemed to have been closed by court order.

No evidence of the defendants was present on 05.01.2018, but the counsel for the defendants moved an application that since the defendant was not well, an adjournment be granted. But the said application dated 05.01.2018, whereby the defendant had sought adjournment on the ground of his ailment, was declined and the evidence of the defendants was closed by court order and the case was adjourned to 09.01.2018 for final arguments.

It is in these circumstances when the evidence of defendants is closed, the petitioner-defendants have filed the present civil revision petition impugning the action of the civil Court dated 05.01.2018.

Perusal of the zimini orders so attached with the file reveals that on two different occasions, efforts were made to compromise the matter, but it could not be resolved. In this manner, these two opportunities cannot be considered to be effective opportunities for the defendants to lead their evidence as the defendants must have remained under the impression that there is possibility of compromising the matter. Moreover, the plaintiff has never opposed the adjournment sought for the purposes of compromise. Therefore, if the opportunities were availed by the defendants so as to arrive some compromise and the counsel for the plaintiff has not raised any objection, it cannot be treated as effective opportunities for the defendants to lead their evidence.

It leads to a conclusion that only three effective opportunities were granted to the defendants to conclude their evidence. The manner in which the adjournments had been granted speaks about itself as when the case was adjourned from 21.11.2017 to 29.11.2017, hardly 8 days' time had been

granted by the civil Court. Therefore, this Court finds that the petitioners deserve at least two more effective opportunities to lead their evidence.

Accordingly, the present petition is allowed and the order dated 05.01.2018 (Annexure P-1) passed by learned Additional Civil Judge (Senior Division), Hisar is set aside. The petitioners are granted two effective opportunities to conclude their evidence. It is made clear that the petitioners shall produce their evidence at their own responsibility.

January 11, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No