

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

C.R. No.1432 of 2018 (O&M)

Date of Decision.08.03.2018

Shankar Lal Ahuja

.....Petitioner

Vs

Yadvinder Singh

.....Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Aakash Singla, Advocate
for the petitioner.

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AMIT RAWAL J.(ORAL)

C.M. No.4811-CII of 2018

Application is allowed.

Zimni orders (Annexures P-4 to P-6) are allowed subject to all
just exceptions.

C.R. No.1432 of 2018

The petitioner has approached this Court by invoking the provisions under Article 227 of the Constitution of India for issuing appropriate directions to the trial Court i.e. Civil Judge (Junior Division), Patiala for expeditious disposal of civil suit No.CS-1691-2015 on account of the reasons stated therein.

Mr. Aakash Singla, learned counsel appearing on behalf of the petitioner submitted that the petitioner-plaintiff instituted the suit for recovery of ₹4 lacs, being principal amount and future interest @18% per annum against the defendant, who is a working contractor on the ground taken therein, as the aforementioned amount was given to the defendant by way of cheque dated 6.12.2012. The same was not repaid, necessitating the petitioner-plaintiff to file the aforementioned suit.

The suit was instituted on 13.10.2015. The defendant did not file the written statement. Ultimately on 08.05.2017, his defence was struck off. On adjourned date i.e. 25.05.2017, the affidavit in examination-in-chief was submitted but despite the plaintiff being a patient of Tuberculosis, the defendant did not cross-examine him on four dates i.e. 25.05.2017, 4.7.2017, 13.07.2017 and 27.7.2017 and last opportunity was granted for 09.08.2017. However, the petitioner closed the evidence vide order dated 24.08.2017. During the defendant's evidence, an application dated 30.10.2017 was moved by the defendant for setting aside the order dated 27.07.2017 treating cross-examination of the petitioner-plaintiff 'nil' by granting permission to cross-examine. The said application was allowed vide order dated 08.01.2018 (Annexure P-2). Thereafter, on three occasions i.e. 25.01.2018, 12.02.2018 and 16.02.2018, the plaintiff appeared for cross-examination but the defendant did not turn up to cross-examine him. However, On 16.02.2018, cross-examination in part was done. On the adjourned date i.e. 01.03.2018, the defendant moved an application for filing written statement knowing fully well that his defence was struck off. It is in this background, the aforementioned prayer was made.

I have heard learned counsel for the petitioner and appraised the paper book. The zimini orders dated 25.01.2018, 12.02.2018 and 01.03.2018 (Annexures P-4 to P-6) show that the plaintiff was present for cross-examination but the defendant did not turn up for cross-examination despite having been allowed to cross-examine after setting aside the order of treating the cross-examine of the plaintiff 'nil'. The orders dated 25.01.2018, 12.02.2018 and 01.03.2018 read as under:-

“Present: Sh. Sunil Gupta, Advocate counsel for the plaintiff.”

Sh. B.S. Bhullar Advocate, counsel for defendant.

Today case is fixed for making payment of cost as well as for cross examination of PW1 Shanker Lal Ahuja. Neither cost paid nor evidence of the plaintiff is present. On request of ld. Counsel for the parties, the case stands adjourned to 12.2.2008 for making payment of cost and for cross-examination of PW1 Shanker Lal Ahuja.

Date of Order:25.01.2018

Next Date:12.2.2018

(Sudipa Kaur)

*CJJD/Patiala
(PB0556)*

*“Present: Sh. Sunil Gupta, Advocate counsel for the plaintiff.
Sh. Gorki Dhiman Advocate, counsel for defendant.*

Sh. Gorki Dhiman Advocate has filed power of attorney on behalf of defendant. Cost paid. No evidence of the plaintiff is present. An adjournment is prayed for by ld. Counsel for the plaintiff, which is granted in the interest of justice. On request of ld. Counsel for the plaintiff, the case stands adjourned to 16.2.2018 for cross examination of PW1 Shanker Lal Ahuja.

Date of Order:12.02.2018

Next Date:16.2.2018

(Sudipa Kaur)

*CJJD/Patiala
(PB0556)*

*“Present: Sh. Sunil Gupta, Advocate counsel for the plaintiff.
Sh. Gorki Dhiman Advocate, counsel for defendant.*

PW1 Shanker Lal Ahuja is present for his further cross-examination but ld. Counsel for the defendant has filed an application u/s 151 CPC for allowing the defendant to file the written statement. Copy supplied. Now to come up on 9.3.2018 for filing its reply.

*Date of Order:01.03.2018
Next Date:9.3.2018*

*(Sudipa Kaur)
CJJD/Patiala
(PB0556)”*

Though on 16.02.2018, cross-examination was done in part, the defendant on 01.03.2018 had filed application under Section 151 CPC for allowing him to file written statement.

On perusal of the aforementioned orders, I am of the view, that the defendant is intentionally delaying the adjudication of the suit and attempting to proceed with the suit on his own whims and fancies, which is not the scope of provisions of Code of Civil Procedure governing the trial of the suit.

Keeping in view the aforementioned fact, particularly the fact that the petitioner is suffering from tuberculosis, I dispose of the present revision petition by issuing directions to the trial Court to decide the suit as expeditiously as possible and preferably within a period of one year in accordance with law.

**(AMIT RAWAL)
JUDGE**

March 08, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No