

115.

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

CIVIL REVISION-2476-2018

Date of decision:19.04.2018.

KULWANT SINGH

... Petitioner

Versus

INDERJIT SINGH AND ORS.

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. C.L. Verma, Advocate,
for the petitioner.

HARI PAL VERMA, J. *(Oral)*

Petitioner has filed the present revision petition under Article 227 of the Constitution of India read with Section 151 CPC for setting aside the order dated 08.01.2018 (Annexure P-4) passed by learned Civil Judge (Junior Division), Phagwara whereby on account of failure to conclude the entire evidence, his evidence was closed. Challenge has also been laid to the order dated 30.03.2018 (Annexure P-7) whereby the application filed by petitioner-defendant No.2 for recalling the order dated 08.01.2018 was also dismissed and the case was adjourned to 12.04.2018 for rebuttal evidence.

Learned counsel for the petitioner has argued that though the suit was filed in the year 2013 and the evidence of the plaintiff remained inconclusive throughout. It is only on 02.11.2017, the case for fixed for DWs. Though the Civil Court has observed that the petitioner-defendant was afforded as many as 7 opportunities, but the zimini orders show that on 3 occasions i.e. on 02.11.2017, 06.11.2017 and 29.11.2017, no DW was

present, whereas on the other dates, DWs were present and examined. Even otherwise, the trial Court was adjourning the case for short dates, whereas one of the witnesses to be examined by the petitioner-defendant is residing at a distant place i.e. Baajpur (Uttarakhand) and he (witness), being an old person, could not be examined. However, without arguing the case on merits, he states that considering the fact that the suit is pending since 2013 and the first opportunity to the petitioner-defendant to examine his witnesses started on 02.11.2017, the petitioner be granted at least two opportunities to conclude his evidence and he is ready to compensate the respondent No.1-plaintiff.

I have heard learned counsel for the petitioner.

Considering the fact that first available opportunity granted to the petitioner to lead his evidence started on 02.11.2017 and the impugned order was passed on 08.01.2018, this Court finds that it cannot strictly be attributed that the petitioner-defendant has exceptionally delayed the proceedings. No doubt, he had suffered a statement/undertaking on 16.12.2017 to conclude his entire evidence on the next date of hearing i.e. 08.01.2018, but because of the reason that one of the witnesses to be examined is residing at a distant place in Uttarakhand and is an old person, he could not arrange the examination-in-chief of this witness. Even otherwise, learned counsel has referred to an affidavit of Srinivas Mittal and a certificate issued by Jawahar Lal Nehru District Hospital, Rudrapur, showing the inability of this witness to attend the court, as he was advised bed rest and to avoid travel.

Having recourse to the provisions of Article 227 of the

is allowed at this stage and the impugned order dated 08.01.2018 is set aside. Petitioner is allowed two more effective opportunities but within the outer limit of one month from today to conclude his evidence. In this manner, he will conclude his entire evidence on or before 21.05.2018. However, that would be subject to payment of 5,000/- to be paid to the respondent No.1-plaintiff.

Present petition is being decided at this stage without issuing notice to respondent No.1-plaintiff as it would further delay the matter. However, in case, the respondent still has any grievance, he is at liberty to file an application for recalling of present order.

(HARI PAL VERMA)
JUDGE

19.04.2018
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No