

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

C.R. No.2680 of 2018

Date of Decision.20.11.2018

Suba Singh

.....Petitioner

Vs

Gurdev Singh and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vipin Mahajan, Advocate
for the petitioner.

Mr. Amit Chaudhary, Advocate
for respondent No.1.

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AMIT RAWAL J. (ORAL)

The present revision petition is directed against the impugned order dated 25.01.2018 (Annexure P-4) and 10.04.2018 (Annexure P-8) whereby evidence of the petitioner-plaintiff has been closed by order and the application for recall of the same has also been dismissed.

Mr. Vipin Mahajan, learned counsel appearing on behalf of the petitioner submitted that the plaintiff had instituted the suit for permanent injunction against the defendant from forcible interference into peaceful possession of the house and dispossession on the ground that the plaintiff had purchased the property vide registered sale deed.

The defendants contested the suit on various ground and issues in this regard were framed on 11.08.2014. The trial Court vide order dated 16.12.2014 disposed of the injunction application and adjourned the matter for 26.02.2015 for plaintiff's evidence, though

before that also the case was on many occasions listed for plaintiff's evidence. Against the aforementioned injunction order, the defendants had preferred miscellaneous appeal before the lower Appellate Court and during this period, the trial Court had adjourned the matter to await file from the lower Appellate Court. The lower Appellate Court dismissed the appeal vide order dated 11.11.2016. As per the zimni orders extracted from 22.04.2015 till 27.10.2016, the original file had not been received from the lower Appellate Court. On receipt of the file on 30.01.2017, the matter was adjourned to 28.04.2017 for plaintiff's evidence. Despite three opportunities, no witness was examined but in the meantime, the matter was transferred. On 06.02.2018, trial Court noticing the fact that one PW was present and examined as no other PW was present, closed the evidence of plaintiff by order, despite the fact that petitioner was present, his cross-examination was deferred. In fact, the matter was adjourned, cross-examination of the plaintiff was deferred on request of learned counsel for the defendant.

It was realized that there were typographical errors in para 2 of the plaint and various other pages of the plaint and accordingly, application for amendment of the plaint was filed on 06.02.2018. Vide order dated 21.02.2018 (Annexure P-5), application for amendment was allowed. On 23.02.2018, the petitioner filed the amended plaint but the matter was adjourned to 27.02.2018. for filing amended written statement. On 27.02.2018, defendant made a statement that he did not intend to file fresh written statement and thereafter, the matter as posted for plaintiff's evidence

on 05.03.2018 and thereafter on 07.03.2018. On 07.03.2018, plaintiff's evidence was closed. Orders dated 05.03.2018 and 07.03.2018 are reproduced as under:-

“Present: Sh. R.S. Goraya, counsel for plaintiff.

Sh. Arvind Dutta, Advocate counsel for defendants.

No PW is present today. Last opportunity for plaintiff evidence as plaintiff has already taken sufficient opportunity, case stands adjourned for 07.03.2018.

sd/-

*(Mahesh Kumar)
Civil Judge (Junior Division)
Gurdaspur UID No.PB 0288*

*Date of Order : 05.03.2018
Next date fixed: 07.03.2018*

“Present: Sh. R.S. Goraya, counsel for plaintiff.

Sh. Arvind Dutta, Advocate counsel for defendants.

No PW is present today. Twelve effective opportunities as the existence of the plaintiff was already by order 25.01.2018 and sufficient opportunity has also been given to the plaintiff for evidence, the evidence of plaintiff is closed by order. For defendant evidence, case stands adjourned for 13.03.2018.”

sd/-

*(Mahesh Kumar)
Civil Judge (Junior Division)
Gurdaspur UID No.PB 0288*

*Date of Order : 07.03.2018
Next date fixed: 13.03.2018*

On 07.03.2018, Court realized that evidence of the plaintiff had already been closed and posted the matter for 13.03.2018 for defendants' evidence. The petitioner submitted that an application for recalling of the aforementioned order was also submitted but the same has erroneously been dismissed vide order dated 10.04.2018.

The zimni orders extracted in the revision petition would reveal that on many occasions, case was adjourned for consideration of interim application, for decision on the amendment application, much less, for reply of the defendant, thus, entire blame cannot be put on the plaintiff.

Mr. Amit Chaudhary, learned counsel appearing on behalf of respondent No.1 submitted that the petitioner plaintiff was negligent in conducting the evidence, therefore, no further opportunity should be granted to the petitioner. Rightly, so the trial court closed the evidence, thus, urges this Court for dismissal of the petition.

I have heard the counsel for the parties, appraised the paper book and of the view that no doubt, the petitioner-plaintiff was negligent in concluding the evidence, however, in order to advance justice and prevent miscarriage of justice, I deem it appropriate to grant one effective opportunity to the petitioner to conclude the evidence.

Keeping in view the aforementioned observations, the impugned order is set aside and the petitioner-plaintiff shall conclude the evidence in accordance with law subject to payment of costs of ₹5,000/- which shall be condition precedent. If the costs is not paid as

directed, the order passed already by the court below shall stand restored.

The impugned order is set aside and the revision petition is allowed.

(AMIT RAWAL)
JUDGE

November 20, 2018
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No