

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

**C.R. No.310 of 2018
Date of Decision.18.01.2018**

Mukesh Kumar and another

.....Petitioners

Vs

Chatru @ Chaturbhuj Sharma and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Amandeep Sibia, Advocate for
Mr. L.S. Lakhanpal, Advocate
for the petitioners.

-:-

AMIT RAWAL J.(ORAL)

The petitioners-defendant No.2 and 3 are in revision against the order dated 2.1.2018 whereby their evidence has been closed.

Ms. Amandeep Sibia, learned counsel appearing on behalf of the petitioners submits that evidence of defendant No.1 was closed vide order dated 14.12.2015 and the matter was listed for evidence of defendant Nos.2 and 3 on 18.12.2015. On 18.12.2015, a request for adjournment was made and the matter was listed for 23.12.2015. On that date, though no DW was present but the counsel for defendant No.1 moved an application for not allowing defendant Nos.2 and 3 to lead evidence and the matter kept pending for consideration till 20.01.2016 and the application aforementioned was withdrawn on that date. Simultaneously on the even date, defendant No.2 & 3 also withdrew the counter claim but the trial Court committed error in fixing the case for rebuttal evidence in spite of giving opportunity to the defendant Nos.2 and 3 to lead evidence viz-a-viz the evidence led by the plaintiff. An application was moved for setting aside the order of closing the

evidence but the same has erroneously been dismissed vide order under challenge in the present revision petition. The zimni orders reproduced in the paper book and the order dated 20.01.2016 are testimony of the same.

I have heard learned counsel for the petitioners and appraised the paper book. The zimni orders as well as the order dated 20.01.2016 are reproduced as under:-

“Present: Sh. S.N. Swami, Adv for plaintiff.

Sh. Rajesh Saini, Adv. for defendant No.1.

Sh. VD Sharma, Adv for defendant No.2 and 3.

One DW is present and examined. No other DW is present. Vide separate statement made by Ld. Counsel for defendant No.1, evidence of defendant No.1 closed after tendering documents Ex.D-1 to Ex.D-3. Now to come upon 18.12.2013 for evidence of defendants No.2 and 3 at own responsibility.

Sd/-

*MZ Khan, CJ(JD) Narnaul,
14.12.2015.*

Present: Sh. S.N. Swami, Adv for plaintiff.

Sh. B.L. Sharma, Adv and Sh. RK Mehta, Adv for defendant No.1.

Sh. S.N. Sharma (T) Adv for defendant No.2 and 3.

No evidence of defendant No.2 and 3 is present. Date is requested by Ld. Counsel for defendant No.2 and 3. Heard. Allowed, now the case is adjourned to 23.12.2015 for evidence of defendant No.2 and 3 at own responsibility.

Sd/-

*MZ Khan, CJ(JD) Narnaul,
18.12.2015.*

Present: Sh. S.N. Swami, Adv for plaintiff.

Sh. B.L. Sharma, Adv and Sh. RK Mehta, Adv for defendant No.1.

Sh. S.N. Sharma (T) Adv for defendant No.2 and 3.

No DW is present. However, an application not allowing defendants No.2 and 3 to lead any evidence filed by defendant No.1. Another application filed by witness Ram Chander. Copy supplied. Now to come upon 4.1.2016 for filing reply of application and consideration on the said both applications.

*Sd/-
MZ Khan, CJ(JD) Narnaul,
23.12.2015.*

Present: Sh. S.N. Swami, Adv for plaintiff.

Sh. B.L. Sharma, Adv and Sh. RK Mehta, Adv for defendant No.1.

Sh. S.N. Sharma (T) Adv for defendant No.2 and 3.

Arguments not advanced. However, vide separate statement made by Ld. Counsel for defendants No.2 and 3 he wants to withdraw the counter claim and he wants to file the fresh suit. In view of the statement counter claim of defendants No.2 and 3 is hereby dismissed as withdrawn. Further Ld. Counsel for defendant No.1 also made statement on the ground that he wants to withdraw the application dated 23.12.2015. In view of the statement application is hereby dismissed as withdrawn. Now to come upon 28.1.2016 for rebuttal evidence and arguments.

*Sd/-
MZ Khan, CJ(JD) Narnaul,
20.01.2016.”*

In view of the aforementioned, there is force and merit in the submissions of Ms. Sibia as the trial Court ought to have listed the for evidence of defendant No.2 and 3 and afforded reasonable opportunity after withdrawal of the application by defendant No.1 and as well as counter claim submitted by defendant Nos.2 and 3 viz-a-viz the evidence led by the plaintiffs in suit claiming declaration and permanent injunction. The

application moved in this regard, in my view, has erroneously been dismissed.

Keeping in view the aforementioned, the order under challenge is set aside and defendant Nos.2 and 3 are granted two effective opportunities to lead evidence subject to payment of costs of Rs.5000/- 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 revision petition is allowed dispensing with notice to the respondent in order to save time of the Court and defray the expenses of litigation of respondent.

(AMIT RAWAL)
JUDGE

January 18, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No