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

**CR No.5993 of 2016(O&M)
Date of Decision: 11.05.2018**

Smt Nirmala Kapoor

.....Petitioner

Vs

Smt. Nirmala and others

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. K.B. Raheja, Advocate
for the petitioner.

Ms. Tanika Goyal, Advocate
for Mr. Prateek Mahajan, Advocate
for respondent No. 3.

Mr. Rohit Chaudhary, Advocate
for Mr. Sanjay Verma, Advocate
for respondent No. 5

RAJ MOHAN SINGH, J. (Oral)

The petitioner has assailed the order dated 23.08.2016 passed by Civil Judge(JD), Faridabad, whereby the evidence of the plaintiff was closed.

Evidence of Amit Kumar, PW2 was concluded. No other PW was present. The perusal of order dated 27.07.2016 would show that one PW, Sumer Singh, was present and was examined as PW-7. No other witness was present on that date. The case was adjourned for 23.08.2016 for evidence of the plaintiff at his own responsibility. It was made clear that in the event of non-examination of the witness,

the evidence of the plaintiff would be closed. Last opportunity was kept intact.

On 14.09.2016, the following order was passed by this Court:-

“Learned counsel for the petitioner contends that the petitioner being the plaintiff is not going to be benefitted by delaying the suit proceedings. Even though the last opportunity was granted to the plaintiff to conclude her entire evidence vide order dated 8.7.2013, but thereafter, the case was adjourned on account of its being referred to mediation centre and also for consideration of applications under Order 1 Rule 10 CPC i.e. for impleading defendant No.5 and under Order 1 Rule 10 (2) CPC i.e. for deletion of defendant No.2 from the array of parties. After necessary addition and deletion of parties, issues were reframed on 7.7.2015 and case was adjourned for the evidence of the plaintiff. Thereafter, the case remained pending for consideration of application under Order 39 Rules 1 and 2 CPC i.e. second application filed by the plaintiff on the apprehension that newly added respondent may alienate the property in question. The said application was decided only on 6.11.2015, thereby restraining defendants No.1 and 5 from alienating the suit property. Thereafter, evidence of the plaintiff started. Learned counsel candidly admitted the factum of number of adjournments, but the same were not solely attributed to the conduct of the plaintiff as despite

showing own responsibility, process of the Court was also sought for summoning the witnesses. Learned counsel prays for awarding two effective opportunities to conclude the plaintiff's evidence subject to payment of adequate costs.

Notice of motion for 17.10.2016.

Dasti as well.

Till the next date of hearing, trial Court is directed to adjourn the proceedings beyond the date fixed by this Court.”

Evidently, there are some laches/omissions on the part of the plaintiff/petitioner in not submitting herself for cross-examination. At the same time, there appears to be some legal flow in not depositing the process fee and diet money for summoning of witnesses in terms of Order 16 Rule 10 of CPC, particularly, when process of the Court had already been invoked. Thereafter, Clerk of the Joint Registrar and scribe of Sh. S.S.Bisla were sought to be summoned in view of deposit of process fee and diet money. In such eventuality, it was obligatory on the part of the Trial Court to secure presence of the witnesses by using coercive method, if they do not appear despite service of summons.

Since aforesaid two witnesses remained to be examined as plaintiff witnesses, therefore, at this stage, the omission on the part of the petitioner in not getting herself cross-examined; can be considered, subject to the payment of cost of Rs. 15,000/-. One last opportunity needs to be granted to the aforesaid purpose subject to depositing the abovesaid amount, payable to respondent No.5.

Payment of cost shall be the condition for granting one more opportunity by the Trial Court in the aforesaid context.

One opportunity qua the cross examination of the petitioner/plaintiff is granted and the Trial Court shall ensure proper service qua remaining witnesses and let their presence be secured in terms of Order 16 Rule 10 CPC if they do not turn up after service.

The revision petition stands disposed of.

11th May, 2018

shabha

(RAJ MOHAN SINGH)
JUDGE

<i>Whether speaking/reasoned</i>	Yes
<i>Whether reportable</i>	Yes/No