

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.5668 of 2018

Date of Decision : 29.08.2018

Kuldeep Singh

....Petitioner

VERSUS

Mandeep Kaur and another

...Respondents

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Rai Singh Chauhan, Advocate for the petitioner.

B.S. WALIA, JUDGE (ORAL)

1. Challenge is to order dated 4.7.2018 passed by the learned Additional Civil Judge (Sr. Division) Dera Bassi (Annexure P-3) closing the evidence of the petitioner-plaintiff on the ground that the plaintiff had availed numerous opportunities to conclude evidence but had failed to conclude the same therefore, there was no justification for grant of further adjournment. Accordingly, the case was adjourned to 6.7.2018 for evidence of the defendant. On 6.7.2018, no proceedings took place and the case was adjourned to 29.8.2018.

2. Learned counsel contends that no doubt opportunities were availed earlier to produce plaintiff's witnesses whereupon evidence of the PWs was recorded. On 23.2.2018, plaintiff's witness was present for cross-examination but his statement could not be recorded as counsel for the respondent-defendant requested for an adjournment which was allowed subject to payment of costs of Rs.500/-. Thereupon, the case was adjourned to 28.2.2018 while binding the witness for the said date for his cross-examination. However, on 28.2.2018, an

application for adjournment was filed by counsel for the petitioner-plaintiff which was allowed and the case was adjourned to 24.4.2018 for cross-examination of witness-Joginder Singh. It was further directed that costs of ₹500/- imposed upon the respondent-defendant be paid by him on the next date of hearing.

3. Learned counsel states that instead of 24.4.2018, the case was taken up on 25.4.2018 on which date cross-examination of PW-1 was recorded and since no other PW was present, the case was adjourned to 18.5.2018 for remaining evidence of the plaintiff. Learned counsel states that again the case instead of 18.5.2018 was taken up on 29.5.2018 on which date the plaintiff's witness was present but on the request of counsel for the respondent-defendant, the case was adjourned to 4.7.2018 for remaining evidence of the plaintiff subject to payment of costs of ₹1,000/-. On 4.7.2018, the impugned order was passed recording therein that no PW was present nor served and since the petitioner-plaintiff had availed numerous opportunities but failed to conclude evidence, there was no justification for grant of further adjournment, therefore, evidence of the plaintiff was closed by order.

4. Learned counsel contends that a perusal of the orders referred to above reveals that on the preceding date i.e. 29.5.2018, the plaintiff's witness was present but the case was adjourned to 04.07.2018 for remaining evidence of the plaintiff on request of counsel for the respondent-defendant subject to payment of costs of Rs.1,000/- Learned counsel further states that even on 25.4.2018, the cross-examination of PW-1 was recorded and that in the circumstances, the failure of the plaintiff's witness to be present on 4.7.2018 was not intentional but due to circumstances beyond the control of the petitioner-plaintiff therefore, one final opportunity ought to have been granted to the petitioner-plaintiff to conclude his

deemed appropriate by the learned trial Court instead of resorting to the harsh step of passing the order closing the evidence of the petitioner-plaintiff. Learned counsel further states that the petitioner has only to examine two witnesses i.e. stamp vendor as well as the witness to the affidavit of the respondent dated 12.11.2012 and that if one opportunity is granted, the petitioner would do the needful on the date fixed.

5. I have considered the submissions of learned counsel for the petitioner and in view of the order being passed, no notice is being issued to the respondent since the same would only delay the proceedings pending before the learned Additional Civil Judge (Sr. Division), Dera Bassi besides would result in inconvenience to the parties and would also entail the respondent having to incur expenditure in engaging a counsel to represent him before this Court.

6. Admittedly, the witness of the plaintiff was present on the date preceding of passing of the impugned order i.e. 29.5.2018. It is the stand of the petitioner that the witness could not appear on 4.7.2018 on account of circumstances beyond the control of the petitioner as well as PW. In the circumstances, I am of the view that in case one opportunity is not granted to the petitioner to examine the stamp vendor and witness of the affidavit of the respondent-defendant, the same would have adverse consequences qua the claim in the civil suit. Accordingly, instead of passing orders closing the evidence of the plaintiff, the learned trial Court ought to have granted one final opportunity subject to payment of costs as was done on the request of respondent-defendant when the case was adjourned twice i.e on 23.2.2018 subject to payment of costs of Rs.500/- and 29.5.2018 when it was again adjourned on request of counsel for the respondent-defendant subject to payment of costs of Rs.1,000/-.

appropriate to set aside the impugned order and direct grant of one opportunity to the petitioner to examine the remaining witnesses on a date to be fixed by the learned trial Court subject to the petitioner's paying ₹10,000/- as costs to the respondent-defendant on or before said date.

8. Revision petition stands allowed in the aforementioned terms.

August 29, 2018
ps

(B.S. WALIA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No