

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 201

CR-6423-2017

Date of decision : 30.07.2018

Municipal Committee, Ladwa

..... Petitioner

VERSUS

Shri Guru Nanak Dev Ji
Educational Society, Ladwa and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Sachin Gupta, Advocate, for the petitioner.

Mr. Rohit Mittal, Advocate, for respondent No. 1.

Ms. Divyastuti Parsoon, Advocate,
for respondents No. 2 and 3.

DEEPAK SIBAL, J. (ORAL)

Through the instant petition, challenge is made to the order dated 15.12.2016, passed by the Civil Judge (Junior Division), Kurukshetra (for short, the Trial Court), through which the petitioner/plaintiff's evidence has been ordered to be closed. Challenge is also made to the order dated 15.05.2017, passed by the Trial Court through which an application filed by the petitioner, seeking to place on record additional evidence has been dismissed.

The facts in brief, which need to be noticed for adjudicating upon the present petition are that the petitioner had filed a suit seeking therein a declaration to the effect that it be declared owner in possession of land measuring 57 kanals and 5 marlas, situated at Village Dera, Tehsil Ladwa, District Kurukshetra (for short, the suit property). The documents relied upon by the respondents/defendants for depicting the transfer of the

suit property in favour of respondents No. 1 to 3 were also challenged on the ground that the same were forged and fabricated. Consequential relief of mandatory injunction directing the respondents not to sell the suit property as also to get corrected the entries qua the suit property in the revenue records was also sought for. The suit was instituted in the year 2011. Issues were framed on 07.10.2015 and thereafter, the matter was adjourned several times for the petitioner to lead its evidence. When the same was not done the impugned order dated 15.12.2016, closing the petitioner's evidence was passed. Thereafter, the petitioner filed an application seeking therein to lead documentary evidence which in view of the fact that the petitioner's evidence had already been closed by order, was rejected through order dated 15.05.2017, leading to the filing of the present petition before this Court for the aforesaid reliefs.

Learned counsel for the parties have been heard and with their able assistance the record has also been perused.

A perusal of the record reveals that the instant suit was filed by the petitioner in the year 2011. Issues were framed on 07.10.2015. Thereafter the petitioner was granted at least three effective opportunities to lead its evidence but to no avail. On the fourth date i.e. on 09.12.2015 neither did the petitioner lead its evidence nor did anyone appear on its behalf, resulting in the suit being dismissed in default. On an application filed by the petitioner, on 18.07.2016, the suit was restored and after its restoration the matter was adjourned for 29.07.2016, 10.08.2016, 09.09.2016, 21.09.2016 and 22.09.2016 to enable the petitioner to conclude its evidence. As the needful was not done, on 03.10.2016 last opportunity

was granted to the petitioner to conclude its evidence. However, the petitioner did not do so. Thereafter the Trial Court was rather liberal in granting eight more opportunities to the petitioner to conclude its evidence. Out of above opportunities at least ten were in the form of 'last' opportunities. When in spite of the grant of all these opportunities the petitioner failed to lead its entire evidence, on 29.11.2016 the Trial Court passed the following order: -

“The present case was fixed for plaintiff's evidence on 7.10.2015 and thereafter, on 23.11.2015 and 2.12.2015 no plaintiff's witness was present. On 9.12.2015, instant case was dismissed in default as none for the plaintiff has appeared. Later on an application for restoration of the case was moved which was allowed on 18.7.2016 and case was again fixed for plaintiff's evidence. The case remained pending for plaintiff's evidence for 29.7.2016, 10.8.2016, 9.9.2016, 21.9.2016, 22.9.2016 and 3.10.2016. Vide order dated 3.10.2016, last opportunity was granted to the plaintiff to lead its entire evidence and thereafter also, plaintiff has availed eight more opportunities but no witness has been examined by the plaintiff. Though, in my humble opinion, no justifiable ground is made out to adjourn the case further for plaintiff's evidence, yet, in the interest of justice, one more opportunity is granted to the plaintiff to lead its entire evidence. The case is adjourned to 15.12.2016 for plaintiff's evidence. It is made clear that no further adjournment shall be granted to the plaintiff and if plaintiff fails to lead its evidence, its evidence shall be deemed to be closed.”

The afore quoted order dated 29.11.2016, passed by the Trial Court was a peremptory order that in case the petitioner fails to lead its evidence on the adjourned date, its evidence shall be deemed to be closed. Neither such order was challenged nor on the adjourned date did the petitioner conclude its evidence. Resultantly, the impugned order dated 15.12.2016 was passed, ordering closure of the petitioner's evidence.

The afore-referred facts speak for themselves. In spite of availing numerous opportunities which included many last opportunities, the petitioner failed to produce its entire evidence. On the date when the

impugned order was passed it was submitted on behalf of the petitioner that its Secretary was to be produced for his cross-examination but the petitioner was unable to do so as the Secretary was under suspension. That was no reason for the petitioner not to produce its witness since even under suspension, the Secretary continued to be the petitioner's employee and especially when it had, on earlier occasions, already been granted several opportunities as also for the reason that the petitioner was well aware of passing of the afore-quoted peremptory order dated 29.11.2016.

Through the impugned order dated 15.12.2016 the petitioner's evidence had been closed. Such order was not challenged by the petitioner. Rather, an application was filed to lead documentary evidence. Once through a specific order the petitioner's evidence had been closed, subsequent to that there was no reason in fact or in law for the Trial Court to permit the petitioner to lead documentary evidence.

In view of the above, no error is found in the order dated 15.12.2016, passed by the Trial Court ordering closure of the petitioner's evidence and once such order is sustained, no fault is found in the subsequent order of the Trial Court dated 15.05.2017 rejecting the petitioner's application to place on record documentary evidence.

Dismissed.

30.07.2018

shamsher

[DEEPAK SIBAL]
JUDGE

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