

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 6686 OF 2018(O&M)

Date of decision: 03.10.2018

Nirmal Singh

... Petitioner

vs

Swaran Singh

.. Respondent

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present:- Ms. Puja Chopra, Advocate
for the petitioner.

Harinder Singh Sidhu, J.

The revision petition has been filed impugning the order dated 17.09.2018 of learned Civil Judge (Junior Division), Ferozepur whereby the evidence of the petitioner was closed by order.

The petitioner is a defendant in a suit for possession by way of specific performance of the agreement to sell dated 1.3.2013 instituted by the respondent. The alleged agreement is in respect of land measuring 10 kanal 19 marlas situated in village Game Wala, Tehsil and District Ferozepur. The total sale consideration was Rs.9,58,125/- and Rs.4,00,000/- was alleged to have been paid as earnest money.

The case of the defendant was that the plaintiff was a commission agent and some blank papers signed by the defendant were used by him to fabricate the agreement to sell. It was further pleaded that in the plaint, the plaintiff had not disclosed that he was a Commission Agent. Issue no.5 to the effect; "Whether the plaintiff has not come to the Court with clean hands and concealed the material facts" was framed.

The case was fixed for evidence of the defendant on 6.4.2018, 26.4.2018, 22.5.2018, 23.7.2018 and 30.07.2018. However, no evidence was led by the defendant. Thereafter the case was adjourned to 13.8.2018,

on which date the defendant (petitioner herein) was examined as DW1. No other witness of the defendant was present and the case was adjourned to 17.9.2018, on which date as no evidence of the defendant was present, his evidence was ordered to be closed.

Learned counsel admits that there have been lapses on the part of the defendant-petitioner and it cannot be denied that the petitioner had sufficient opportunities to lead his evidence. However, the petitioner is a poor farmer, who is not well conversant with the legal intricacies. She prays that one opportunity be granted to the petitioner to prove the fact that the plaintiff is a Commission Agent by examining an official from the office of the Market Committee. If this opportunity is not granted, the petitioner would suffer irreparable loss. She states that proving this fact is essential for effective adjudication of the case. She further argued that in fact one of the witness of the plaintiff himself has admitted during cross examination that the plaintiff was running a commission agency under the name and style of M/s Sarpanch Commission Agents.

Considering the facts and circumstances of the case, this petition is allowed. The impugned order dated 17.09.2018 to the extent of closing the evidence of the defendants is set aside. The trial Court may grant one effective opportunity to the petitioner to examine an official from the office of Market Committee, Ferozepur to prove the fact that the plaintiff is a commission agent. This shall be subject to payment of Rs.10,000/- as costs to the plaintiff.

This revision petition has been disposed of without notice to the respondents to avoid unnecessary delay and expenses. However, if the respondent has any grievance, he is at liberty to approach this Court for recalling this order.

03.10.2018
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(Harinder Singh Sidhu)
Judge

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No