

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

**Civil Revision No.7756 of 2015 (O&M)
Date of Decision:13.08.2018**

**Gram Panchayat Dawla and others
.....Petitioners**

Vs

**Zile Singh and others
....Respondents**

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

Present:Mr.Sandeep Parkash Chahar, Advocate
for the petitioners.

Mr. D.K. Tuteja, Advocte
for respondents No.1, 3, 4, 6 to 8, 11, 13 & 14.

Petition *qua* respondent No.2 already dismissed.

RAJ MOHAN SINGH, J.

[1]. This revision petition has been preferred against the orders dated 25.02.2015 and 19.08.2015 passed by the Civil Judge (Jr. Divn.) Jhajjar vide which evidence of the defendants/petitioners was closed by order of the Court and an application for additional evidence filed by them was also dismissed.

[2]. Brief facts are that evidence of the plaintiffs started w.e.f. 09.05.2013. It was ultimately closed on 05.08.2014

ranging in more than 11 opportunities in a span of about 1 year 3 month. The evidence of the defendants started w.e.f. 02.09.2014. No DW was present on 02.09.2014, the case was adjourned for 12.11.2014. Thereafter, the case was adjourned for 22.12.2014, 29.01.2015 and 25.02.2015. On 29.01.2015, the trial Court granted last opportunity to the defendants to conclude their evidence failing which the evidence of the defendants was to be closed by deeming fiction by virtue of that order. Deeming fiction was not adhered to and the trial Court again passed an order dated 25.02.2015 closing the evidence of the defendants by order of the Court. Thereafter the effort made by the defendants to lead additional evidence also went in vain, when the application was dismissed by the trial Court on 19.08.2015.

[3]. During proceedings of the present revision petition, it was noticed in the order dated 10.10.2017 passed by the Co-ordinate Bench of this Court that notice to respondent No.2 could not issued for want of correct address, therefore, revision petition *qua* respondent No.2 was ordered to be dismissed, leaving the parties to see the effect of such dismissal at the time of disposal of the petition.

[4]. Respondent No.2 is arrayed as plaintiff No.2 before the trial Court. The suit is for permanent injunction and

consequential relief of mandatory injunction. The pleadings made in para No.3 of the plaint are to the following effect:-

“3. *That the plaintiffs being proprietors of village Dawla Teh. & Distt. Jhajjar are co-sharers in above mentioned Khasra numbers. The above mentioned Khasra numbers have not been partitioned by meets and bounds. The plaintiffs got their respective possession from their ancestors and constructed their residential houses in the abadi deh and are having their Gitwar, Ghair and plots also in the above mentioned Khasra No.96. The plots, Ghair and Gitwar are reflected in the site plan submitted by plaintiffs along with the plaint. The above mentioned land was never used for common purposes but has been used by the proprietors since the inception of village. The site plan is attached herewith the plaint and may be read as part of this plaint.*”

[5]. At this stage, it will be highly imaginary to foresee the ultimate result of the suit. Even if, the present revision petition is dismissed qua plaintiff No.2/respondent No.2, still the trial Court would consider the controversy qua other plaintiffs in accordance with law. The fate of the suit cannot be adjudged at this premature stage so as to draw any inference on account of dismissal of this revision petition qua respondent No.2. In view of above, I deem it appropriate to consider the controversy on merits.

[6]. Learned counsel for the petitioners submitted that the inaction on the part of the defendants is not such as it would invite harsher impact on their prospect of leading evidence. In view of ratio of **Kailash vs. Nanku and others, 2005(2) R.C.R. (Civil) 379**; **Sandeep Thapar vs. SME Technologies Private Limited, 2014(1) R.C.R (Civil) 729** ; **Sita Ram and others vs. Gurbax Singh and others, 2013(4) Law Herald 3436**; **Sukhjinder Singh @ Sukha vs. Shamsheer Singh, 2014(2) Law Herald 1762**; **Surinder Mittal vs. Pooja Mittal, 2013(1) Law Herald 24** and **Salem Advocate Bar Association, Tamil Nadu vs. Union of India, AIR 2005 SC 3353**, the rule of procedure has to be treated as directory even though the same is couched in a mandatory overtone.

[7]. On the other hand, learned counsel for the respondents by placing reliance upon **M/s Shiv Cotex vs. Tirgun Auto Plat P. Ltd., 2011(4) R.C.R. (Civil) 807**, submitted that the proviso to Order 17 Rule 1 CPC has to be meticulously observed. Even though the same is not mandatory and in a suitable case more than three adjournments can be granted on justifiable cause. Ordinarily the cap provided in the proviso to Order 17 Rule 1 CPC should be maintained and the justifiable cause as per ratio in the aforecited case should be sufficient cause which would enable the defendants to seek adjournment beyond the cap of

three adjournments. The sufficient cause have been categorized like, (a) sudden illness of the litigant or the witness or the lawyer, (b) death in the family of any of them and (c) natural calamity like floods, earthquake etc.

[8]. Learned counsel further submitted that no reasons much less sufficient reasons have come forth for not leading the evidence despite four adjournments.

[9]. I have considered the submissions made by learned counsel for the parties.

[10]. Perusal of the record would show that the defendants were granted only four opportunities. The fifth opportunity i.e. on 25.02.2015 was a consequence of the deeming fiction which was ordered on 29.01.2015. There was an omission on behalf of the defendants in not leading their evidence in time. It can be noticed that the evidence of the defendants started w.e.f. from 02.09.2014. The fourth adjournment was on 29.01.2015 and on that very day last opportunity was granted with a deemed fiction that in the event of not leading evidence on 25.02.2015, the same was to be deemed closed.

[11]. In my considered opinion, the law of procedure is a handmaid of justice. Keeping in view the nomenclature of defendant No.1 i.e. Gram Panchayat Dawla, I deem it

appropriate to grant one more opportunity to the defendants/petitioners to conclude their evidence on their own responsibility. Consequently, the impugned orders dated 25.02.2015 and 19.08.2015 passed by the Civil Judge (Jr. Divn.) Jhajjar are hereby set aside. This revision petition is allowed, however subject to payment of Rs.15,000/- as costs to be paid to respondents/plaintiffs Nos.1, 3, 4, 6 to 9 and 12 to 14 as petition qua respondent No.2 has already been dismissed and respondents No.5, 10 and 11 have already been proceeded *ex parte* vide order dated 28.09.2016 passed by the Co-ordinate Bench of this Court.

[12]. Payment of costs shall be the condition precedent for granting indulgence by the trial Court in the aforesaid context.

August 13, 2018

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No