

205

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

**CR No.7870 of 2018 (O&M)
Date of Decision:20.11.2018**

Baljinder Kaur

.....Petitioner

Vs

Harwinder Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

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

RAJ MOHAN SINGH, J.

[1]. This revision petition has been preferred by the petitioner under Article 227 of The Constitution of India for setting aside the impugned order dated 25.09.2018 passed by the Judicial Magistrate Ist Class, Ludhiana whereby the evidence of the petitioner/defendant No.1 has been closed by order of the Court.

[2]. A suit for declaration was filed by the plaintiff/respondent to the effect that plaintiff is the absolute owner in possession of land measuring 3 Kanals 4 Marlas on the basis of registered Will dated 05.07.1985.

[3]. After framing of issues, the evidence of the plaintiff was closed on 26.07.2017 and thereafter, the case was adjourned

for defendant's evidence for 03.08.2017. Perusal of the interim orders passed by the trial Court from time to time would show that defendants have availed 48 effective opportunities including last and final opportunity to conclude their evidence.

[4]. Vide impugned order dated 25.09.2018 passed by the trial Court, the evidence of the defendants was closed by order and the case was adjourned for rebuttal evidence, if any and for arguments.

[5]. By filing the present revision petition, defendant No.1 has prayed for one more opportunity to conclude defendants evidence.

[6]. I have considered the submissions made by learned counsel for the petitioner.

[7]. Perusal of the record would show that the evidence of defendant started on 03.08.2017. On 03.08.2017, no DW was present and the case was adjourned to 16.08.2017 for defendants evidence at own responsibility. Similar order was passed on 16.08.2017. Therefore, the case was further adjourned to 24.08.2017 for the same purpose. Many a times, the case was adjourned thereafter, but no DW was examined. It was only on 20.09.2017, DW 1 Parwinder Singh and DW 2 Darshan Singh were present and tendered their respective

affidavits in their examination-in-chief. DW 3 Vijay Kumar was also present and was examined completely. The case was adjourned to 28.09.2017 for cross examination of DW 1 and DW 2. On the adjourned date, DW 2 was partly cross examined and the case was adjourned for remaining cross examination of DW 2 and DW 1. On 30.10.2017, DW Kuldeep Singh was present but could not be examined. Thereafter, on 27.11.2017, DW 5 Rajesh Kumar was examined and the case was adjourned to 04.12.2017 subject to last opportunity. Later, on several occasions, no DW was present and the case was adjourned for the same purpose again and again at own responsibility. On 09.01.2018, DW 6 Ajmel Singh was examined and on 18.01.2018, DW 7 Baljinder Kaur was present and was partly cross-examined. On 05.02.2018, DW 7 was cross examined and the case was adjourned for 14.02.2018 for remaining evidence. On the adjourned date DW 8 was present and tendered his affidavit. Thereafter, the case was adjourned for 20.02.2018, 27.02.2018 and 06.03.2018, but no DW was present. On every date recital of own responsibility was recorded. On 15.03.2018, DW 1 Parwinder Singh was partly cross-examined. On 05.04.2018, last opportunity with deemed closure of evidence in the event of failure was granted. On 12.04.2018, defendant No.1 was directed to produce the entire

evidence on 23.04.2018, failing which the evidence of defendant No.1 was ordered to be closed with deemed fiction. Bailable warrants were also issued for the witnesses concerned. DW 1 Parwinder Singh did not appear in Court for his cross examination on 23.04.2018. bailable warrants were issued but were not received back. Therefore, DW 1 was ordered to be summoned through non-bailable warrants and last opportunity was also given. In the meanwhile, the Court came to know that non-bailable warrants were not issued by the concerned Ahlmad. Therefore, non-bailable warrants were further issued and cost of Rs. 300/- was imposed on 25.05.2018. On the adjourned date i.e. 05.07.2018 the Trial Court observed that no cost has been paid and Non Bailable Warrants were not issued by the concerned Ahlmad, therefore, again the Non Bailable Warrants were ordered to be issued for 27.07.2018. Thereafter, on 09.08.2018 the Court again recorded the same observation that warrants were not issued and warrants were again issued for 28.08.2018. Further DW 1 and DW 8 were examined but their further cross examinations were deferred for want of certain documents for 28.08.2018. On the adjourned date, DW 8 was present, but could not be cross examined. The remaining DWs were summoned for 12.09.2018 subject to last and final opportunity. Thereafter, on 12.09.2018 no DW was present and

again last and final opportunity was granted to the defendants to conclude their evidence and the case was adjourned to 25.09.2018. On 25.09.2018, no DW was present and impugned order came to be passed.

[8]. In view of facts and circumstances of the case, it is found that numerous opportunities have been availed by the petitioner to conclude her evidence. Even the bailable and non-bailable warrants were issued with cost of Rs.300/- but even the cost was not paid in the Trial Court. In **Shri Anand Parkash vs Shri Bharat Bhushan Rai and anr., 1982(1) R.C.R. (Rent) 1, (Full Bench)** of this Court held that in the event of nonpayment of cost on the adjourned date, it is mandatory on the part of the Court to disallow prosecution of suit or defence as the case may be. Awarding of costs to the aggrieved party, though is the subject matter of discretion of the Court in terms of Section 35-B CPC, but once that discretion is exercised and the same is not complied with by the defaulting party, it shall become mandatory on the part of the Court to disallow further prosecution of the suit or the defence as the case may be. Last and final opportunities were also given, but still defendant's witnesses did not turn up. Nature and intensity of orders passed by the trial Court on record, do not warrant any exercise of discretion in favour of the petitioner in terms of leading further

evidence.

[9]. In view of above, I find no error in the impugned order dated 25.09.2018 passed by the Judicial Magistrate Ist Class, Ludhiana. This revision petition is found to be totally devoid of merits and the same is accordingly dismissed.

20.11.2018

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(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No