

RSA-3478-2017 (O&M)

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

RSA-3478-2017 (O&M)
Date of decision : 07.12.2018

Bhawna

... Appellant

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Namit Gautam, Advocate
for the appellant.

AMIT RAWAL, J.

CM-8410-C-2017

For the reasons stated in the application, the delay of 13 days in
filing the appeal is condoned.

CM stands disposed of.

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Notice of motion.

On the asking of the Court, Mr. Sandeep Mann, AAG, Punjab,
accepts notice on behalf of the respondents.

The short point involved in the present appeal is whether the
appellant-plaintiff can be permitted to lead evidence in a suit claiming
injunction against the defendant(s)/State from forcible dispossession and
interference, which was dismissed by invoking the provisions of Order 17
Rule 3 of the Code of Civil Procedure.

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The plaintiff sought the injunction on the ground that on the basis of the legal Will executed by Amar Nath Shoor, the plaintiff had been in possession of the suit property, even the mutation, in this regard, was also entered into. Some recovery proceedings were before the Tehsildar against M/s Parko Tools India, to whom, the plaintiff had nothing to do, but they openly proclaimed for seeking auction, in such circumstances, the suit aforementioned was filed.

Learned counsel appearing on behalf of the appellant-plaintiff submitted that though the plaintiff had not a reasonable explanation in not leading the evidence in support of the averments in view of the zimini orders extracted in the grounds of appeal, but no harm and prejudice would be caused to the respondents, in case, one opportunity is granted to lead evidence, subject to any terms and conditions, which this Hon'ble Court may deem fit.

I have heard learned counsel for the parties, appraised the paper book and of the view that no doubt the appellant-plaintiff had not been diligent in leading the evidence in support of the averments made in the plaint as the opportunities for leading of evidence commenced from October 2015 to till 21.07.2016. However, in order to advance justice and prevent miscarriage of justice, I deem it appropriate to grant two effective opportunities to the appellant-plaintiff to lead evidence in support of the averments made in the plaint.

Keeping in view the aforementioned observations, the judgments and decrees of the Courts below are set aside and the suit of the plaintiff is ordered to be restored to its original number. The second regular second appeal is allowed, subject to the payment of ₹20,000/-, to be paid in

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the account of Bar Association, District Courts, Jalandhar, which shall be
condition precedent.

07.12.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**