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

CR No.64 of 2019

Date of Decision : 31.01.2019

BHUPINDER SINGH**....PETITIONER****V/S****RACHHPAL KAUR AND OTHERS****....RESPONDENTS****CORAM : HON'BLE MR. JUSTICE B.S. WALIA**

Present: Mr. Sanjeev Kumar Arora, Advocate for the petitioner.

Mr. Neeraj Madaan, Advocate for respondent Nos.1 to 3.

B.S. WALIA, J. (ORAL)

[1] Challenge is to order Annexure P-1 dated 25.10.2018, whereby the evidence of the petitioner-plaintiff was closed by order, as also to order Annexure P-2 dated 08.12.2018, whereby the application filed for recall of order dated 25.10.2018 was dismissed.

[2] PW-1, Bhupinder Singh, was examined in Chief on 22.02.2018. However, the case was adjourned from time to time either on account of non availability of PW-1 for cross-examination or on account of inability of respondents-defendants to cross-examine PW-1. Eventually, on 25.10.2018, the learned Civil Judge (Junior Division), Guruharsahai, closed the evidence of the petitioner-plaintiff by order on the ground that numerous opportunities had been availed to conclude entire evidence by the petitioner-plaintiff but he had failed to conclude the same, therefore, no ground was made out to grant further

adjournment for the purpose. After closing the evidence of the petitioner-

plaintiff, the case was adjourned to 13.11.2018 for defendant evidence. Application was filed for recall of order dated 25.10.2018, closing the evidence of the petitioner-plaintiff by order, however, the same was also dismissed by taking note of the fact that numerous opportunities including last opportunity to conclude evidence had been availed and that on 22.09.2018, petitioners-plaintiffs were granted last opportunity to conclude their evidence, subject to imposition of costs of Rs.500/- but that on 25.10.2018, neither the costs were paid nor the plaintiffs had examined PW-1 Bhupinder Singh.

[3] Learned counsel for the petitioner-plaintiff states that in fact on 25.10.2018, the cost of Rs.500/- could not be paid but the learned Civil Judge (Junior Division), Guruharsahai did not take into account the non-payment of costs on the said date and subsequently i.e. on 30.01.2019, costs as were ordered to be paid vide order dated 27.09.2018 have already been paid on 30.01.2019 and the same have been accepted by the respondents-defendants.

[4] Learned counsel states that a perusal of the case file reveals that the petitioner-plaintiff had appeared on a number of dates for his cross-examination but the same was not done by counsel for the respondents-defendants who had taken adjournment.

[5] Learned counsel states that in case one opportunity is not granted, grave prejudice would be caused to the petitioner-plaintiff, as his evidence would not be taken into account in the absence of PW-1 facing cross-examination.

[6] *Per contra*, learned counsel for the respondents-defendants contended that numerous opportunities had been availed and that in the circumstances, no interference was warranted with the impugned order.

[7] I have considered the submissions of learned counsel for the parties.

[8] Admittedly, PW-1 appeared on a number of dates after recording of his examination-in-chief for cross-examination but he was not cross-examined on account of counsel for the respondents-defendants taking an adjournment. No doubt, numerous opportunities were availed by the petitioner-plaintiff to conclude his evidence but the same was not concluded despite grant of even last opportunity. However, in the light of decision of this Court in 2011 (5) RCR (Civil) 891 in case titled as '**Devinder Sehdev versus Malkiat Singh**', 2007(4) RCR (Civil) 511, in case titled as '**State Bank of India versus M/s Aman Tex Fabrics and Others**', 2010 (9) RCR (Civil) 898 in case titled as '**Gurmeet Kaur and others versus Javinder Singh @ Jawinder Singh**', one effective opportunity is granted to the petitioner-plaintiff to conclude his entire evidence. Accordingly, the impugned orders dated 25.10.2018 (P-1) & 08.12.2018 (P-2) are **set aside** in order to do substantial justice between the parties. Subject to payment of costs of Rs.10,000/-, the petitioner-plaintiff shall be granted one effective opportunity to adduce his entire evidence. Accordingly, revision petition is **allowed** in the aforementioned terms.

(B.S. WALIA)
JUDGE

January 31, 2019
rajneesh

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