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

**Civil Revision No.4945 of 2018
Date of Decision: 22.05.2019**

**Satish KumarPetitioner
Vs
Gurbax Singh (Since deceased) through LRs
....Respondents**

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Vaibhav Sehgal, Advocate
for the petitioner.

Mr. B.S. Sidhu, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged the order dated 22.05.2018 passed by the Civil Judge (Jr. Divn.) Ludhiana vide which the application filed by the plaintiff/respondent for recalling of order dated 04.01.2018 was allowed and three opportunities were granted to the plaintiff to conclude his evidence, failing which the order dated 04.01.2018 was to remain intact.

[2]. Vide order dated 04.01.2018 passed by the Civil Judge (Jr. Divn.) Ludhiana the evidence of the plaintiff was closed by order. The said order reads as under:-

“Present:Sh. Upkar Singh Adv. Counsel for the plaintiff.

Sh. M.C. Sehgal, Adv. Counsel for the defendant.

Today case was fixed for evidence of the plaintiff. Perusal of file shows that the case was fixed for plaintiff evidence since 27.04.2017. thereafter, on 03.08.2017 plaintiff examined Harbhajan Singh and Jagmohan Singh as PW1 and PW2, respectively in his evidence. Thereafter, on 06.09.2017 plaintiff again examined Satbir Singh and Balwinder Singh as PW3 and PW4, respectively in his evidence. But till today the cross-examination of the above said witness has not been completed. Plaintiff availed numerous opportunities for his evidence. Today again Id. Counsel for the plaintiff requested for date for his evidence. But I find no ground to further adjourn the case for said purpose. As such plaintiff evidence is closed by order. Now, the case is adjourned to 17.01.2018 for defendant evidence.

Sd/-

*Date of order:
04.01.2018*

*Rajinder Singh Teji, PCS
UID Code: PB-0427
CJJD/Ludhiana”*

[3]. Against the aforesaid order, an application was filed for recalling of the order. The trial Court passed the order dated 22.05.2018, whereby order dated 04.01.2018 was recalled by giving three opportunities to the plaintiff to conclude his evidence, failing which the order dated 04.01.2018 was to be restored.

[4]. Learned counsel for the petitioner submitted that the issues were framed on 27.04.2017. Thereafter the case was adjourned for 04.07.2017. On the said date, no PW was present and the case was adjourned for 03.08.2017 for evidence of the plaintiff at his own responsibility. On the adjourned date i.e. 03.08.2017, PW-1 Harbhajan Singh and PW-2 Jagmohan Singh

tendered their affidavits in examination-in-chief. The cross-examinations of the aforesaid witnesses were deferred at the instance of the defendant and the case was adjourned for 06.09.2017 i.e. the date on which PW-3 Satbir Singh and PW-4 Balwinder Singh also filed their affidavits in their examination-in-chief. Their cross-examinations were also deferred at the instance of defendant and the case was adjourned for cross-examination of all the four PWs for 25.09.2017. On 25.09.2017, PW-3 Satbir Singh was cross-examined partly and his further cross-examination was deferred for want of documents. PW-1 and PW-2 were also present, but they could not be cross-examined. No other PWs were present. The case was accordingly adjourned for 16.10.2017 for cross-examinations of PWs and for remaining evidence of the plaintiff.

[5]. Learned counsel further submitted that on 16.10.2017, no PW was present and the case was adjourned for 01.11.2017 for cross-examinations of PWs and for remaining plaintiff's evidence. On the adjourned date i.e. 01.11.2017, PW-4 was present, but could not be cross-examined by the defendant. No other PW was present. On the request of the defendant, the case was adjourned for 13.11.2017 for cross-examination of all the PWs and for remaining evidence of the plaintiff subject to last opportunity. On 13.11.2017, no PW was present and the

case was adjourned for 07.12.2017 for cross-examinations of PWs and for remaining evidence of the plaintiff subject to last opportunity. On 07.12.2017 none appeared on behalf of the plaintiff. Notice was issued to the plaintiff in the interest of justice for 04.01.2018 i.e. the date on which the first impugned order came to be passed.

[6]. I have considered the submissions made by learned counsel for the parties and have perused the interlocutory orders passed by the trial Court.

[7]. On 04.07.2017, no PW as present and the omission was attributable to the conduct of the plaintiff. On 03.08.2017, the cross-examinations of PW-1 and PW-2 were deferred at the instance of the defendant. So, no fault can be attributed to the plaintiff. Similarly, on 06.09.2017, PW-3 and PW-4 tendered their affidavits in their examination-in-chief and the case was deferred at the instance of the defendant qua cross-examinations of all the four PWs. No fault can be attributed to the plaintiff even on that score. On 25.09.2017, PW-3 was cross-examined partly and remaining cross-examination was deferred for the want of documents. PW-1 and PW-2 were present, but they could not be cross-examined. Therefore, no fault can be attributed to the plaintiff on that score also. On 16.10.2017, there was no PW present in the Court and the

omission was attributable to the plaintiff. On 01.11.2017, PW-4 was present in Court, but could not be cross-examined by the defendant. Since the defendant was not in a position to cross-examine PW-4, therefore, absence of other PWs would not have mattered much for the purposes of their cross-examinations at the instance of the defendant. Still the last opportunity was granted by the trial Court for cross-examinations of the witnesses.

[8]. On 13.11.2017, no PW was present and last opportunity was granted to the plaintiff. The adjournment of the case was attributable to the conduct of the plaintiff. Thereafter, same situation persisted on 07.12.2017. Even learned counsel for the plaintiff did not appear and on the adjourned date i.e. 04.01.2018, the impugned order came to be passed.

[9]. In view of aforesaid interlocutory orders, it can be seen that the plaintiff was not responsible for the adjournments except four in number. The indulgence has been granted by the trial Court vide order dated 22.05.2018 by recalling the order dated 04.01.2018. Since the conduct of the plaintiff also attributed delay in disposal of the case as there was apparent lach on his behalf on 04.01.2017, 16.10.2017, 13.11.2017, 07.12.2017 and 04.01.2018, therefore, in my considered opinion the indulgence granted by the trial Court in granting three

opportunities to the plaintiff to conclude his evidence is on the higher side. The trial Court ought to have granted one effective opportunity owing to the conduct of the plaintiff for cross-examinations of all the four PWs by the defendant.

[10]. In view of facts on record, I deem it appropriate to modify the impugned order dated 22.05.2018 passed by the Civil Judge (Jr. Divn.) Ludhiana by granting one effective opportunity to the plaintiff for cross-examination of all the PWs and for remaining evidence, however subject to costs of Rs.15,000/- to be paid to the defendant/petitioner. It is made clear that in case the defendant/petitioner does not cross-examine the plaintiff witnesses on the date fixed by the trial Court, the trial Court shall proceed to pass appropriate order in the accordance with law.

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

[12]. In view of above, this revision petition stands disposed of.

May 22, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No