

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CR No.6606 of 2016

Date of decision: 29.08.2019

Dharmbir

...Petitioner

versus

Rajrani

...Respondent

Coram: Hon'ble Mr. Justice B.S. Walia

Present: Mr. Manish Jolly, Advocate for the petitioner.

Mr. Govind Rana, Advocate for
Mr. Harkesh Manuja, Advocate
for the respondent.

B.S. WALIA, J.

[1] Revision petition has been filed under Article 227 of the Constitution of India, praying for setting aside of order dated 11.07.2016, passed by the learned Civil Judge (Junior Division), Gohana in Civil Suit No.RT/186 of 2016 titled as '**Dharmbir** versus **Rajrani**', closing the evidence of the plaintiffs by Court order on the ground that issues had been framed on 14.07.2015 and despite grant of sufficient opportunities, the plaintiff had failed to conclude evidence.

[2] Learned counsel contends that on 06.10.2015, evidence of PW-4 Naresh Kumar Sharma was recorded as PW-4, while affidavits of PWs Dharmbir, Balbir and Naresh were tendered but their cross-examination was deferred for 16.11.2015 on the request of counsel for the respondent-defendant and although cross-examination of PW-Dharmbir was conducted on 20.01.2016, cross-examination of other PWs i.e. Balbir and Naresh could

not be conducted on account of joint request by counsel for the parties as parties were negotiating to compromise the matter. Accordingly, the case was adjourned to 24.02.2016 for cross-examination of PWs Balbir and Naresh, as well as for remaining evidence of the plaintiff. Thereafter, the case was adjourned on 24.02.2016, 23.03.2016 and 26.04.2016 on account of PWs not being present. Eventually, on 11.07.2016, the impugned order was passed, closing the evidence of the plaintiff-petitioner.

[3] Learned counsel contends that no doubt evidence could not be concluded despite grant of a number of opportunities but the same was solely on account of the parties negotiating a settlement.

[4] Learned counsel further contends that one opportunity be granted for cross-examination of PWs Balbir and Naresh subject to payment of costs, failing which, grave prejudice would be caused to the petitioner.

[5] Learned counsel for the respondent on the other hand contends that the petitioner was granted sufficient opportunities for concluding evidence but failed to conclude the same, therefore, the impugned order does not warrant interference but in case opportunity is granted to the petitioner, the same should be subject to imposition of exemplary costs.

[6] I have heard learned counsel.

[7] A perusal of the paperbook reveals that the petitioner-plaintiff had filed a suit for specific performance of agreement to sell *qua* plot measuring 56 sq. yds. against total sale consideration of Rs.34,720/- with the averments that said amount was paid at the time of execution of agreement to sell, receipt executed by the respondent and possession of the plot handed over to the petitioner-plaintiff. The petitioner was granted a number of opportunities to conclude evidence but failed to do so. Accordingly, no

infirmity can be found with the impugned order. However, taking all aspects of the matter into account, particularly that the reason for failure to conclude evidence was negotiations between the parties for a compromise, which did not fructify, it is deemed appropriate to grant one opportunity to the petitioner to produce PWs Balbir and Naresh for cross-examination, subject to payment of costs.

[8] Accordingly, the impugned order is *set aside*. The petitioner-plaintiff shall be granted one effective opportunity for producing PWs Balbir and Naresh for cross-examination subject to payment of ₹5,000/-, as costs to the respondent-defendant.

[9] Revision petition *allowed* in the aforementioned terms.

[10] Parties through counsel are directed to put in appearance before the learned trial Court on **19.09.2019** for further proceedings in accordance with law.

August 29, 2019
'Rajneesh'

(B.S. WALIA)
JUDGE

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