

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

**RSA No.5882 of 2014(O&M)
Date of Order:12.03.2019**

Raj Kumar

..Appellant

Versus

Harjit Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Munish Gupta, Advocate,
for the appellant.

Mr. H.S.Saini, Advocate,
for respondent no.1.

Mr. Neeraj Sharma, Advocate,
for respondent no.2.

ANIL KSHETARPAL, J(Oral)

Defendant no.1-appellant is in the regular second appeal against the judgments passed by the courts below while decreeing a suit for possession by way of specific performance of the agreement to sell dated 10.03.2004.

Learned counsel appearing for the appellant has submitted that proper opportunity was not granted to the defendant to lead his evidence. He submitted that the evidence of the plaintiff started with effect from 18.05.2007 and after grant of 8 effective opportunities, the evidence was closed on 09.12.2009. Thereafter, the case was adjourned for defendant's evidence to 01.02.2010, on which date it was adjourned to 16.04.2010. On 16.04.2010, the Presiding Officer was on leave and the file was taken up on 13.04.2010 and adjourned to 14.05.2010. On 14.05.2010, the case was

adjourned to 03.06.2010, last opportunity. On 03.06.2010, the court heard the arguments and decided the case.

On the other hand, learned counsel for the respondent has submitted that the defendant has been granted 3 effective opportunities and on 14.05.2010, the court had indicated that it shall be the last opportunity. He therefore, submitted that sufficient opportunities had been given to the defendant.

Question which needs consideration is “what would be the sufficient opportunities in the context of this case?”.

As noticed above, plaintiff was granted more than a period of 2½ years in which 8 effective opportunities were granted to the plaintiff. It has been seen that the courts after closing the evidence of the plaintiff are in undue haste to decide the case. Plaintiff and defendant are equally entitled to the opportunity to lead their evidence and establish their case. In the present case, discrimination between the plaintiff and defendant is absolutely clear. As compared to 2½ years time granted to the plaintiff, only 4 months' time was granted to the defendant.

On the second opportunity itself, the Presiding Judge granted last opportunity and imposed costs and on the next date, the Presiding Judge proceeding to decide the matter. No doubt, the courts are making sincere attempt to disposed of old cases but the courts must be conscious of the fact that they are here to do substantive justice. Some time, it may not be possible for the party to produce evidence for various reasons. In the present case, defendant no.1 has pleaded that he was ill, which is disputed by learned counsel for the plaintiff-respondent.

Be that as it may, once there is no dispute that the court closed

the evidence of the defendant and decided the case within 4 months from the date the case was fixed for defendant's evidence, it is not be proper to hold that proper opportunity was granted to the defendant.

Keeping in view the aforesaid facts, the judgments passed by the courts below are set aside. Case is remitted back to the learned trial court to grant 2 further opportunities to defendant no.1-appellant to lead his entire evidence and thereafter proceed to decide the suit.

The *prima facie* observations made by this court should not be taken as an expression of final opinion on the merits of the case. The trial court shall be free to re-decide the suit in accordance with law on the basis of material which has come on record.

Parties through his counsel are directed to appear before the learned trial court on 27.04.2019.

Learned trial court is requested to make sincere attempt to decide the suit within 6 months from the date of receipt of certified copy of the judgment.

Regular Second Appeal stands disposed of.

March 12, 2019
nt

(ANIL KSHETARPAL)
JUDGE

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