

CR-7069 of 2019

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

CR No.7069 of 2019

DATE OF DECISION:07.11.2019

Kavita and another

...Petitioners/defendants No.2 and 3

Vs.

Gurdeep Singh and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE LALIT BATRA

Present: Mr. Amit Kohar, Advocate
for the petitioners/defendants No.2 and 3.

LALIT BATRA, J. (Oral)

This civil revision has been filed by petitioners/defendants No.2 and 3 impugning the legality of order dated 30.10.2019 (Annexure P-10) rendered by trial Court, in terms of which, their evidence has been closed by Court order.

2. Learned counsel for the petitioners/defendants No.2 and 3 at the very outset has urged that in the instant case after completion of pleadings of the parties, issues were framed by trial Court, vide order dated 31.10.2018 (Annexure P-3) and especially the fact that as many as fifteen (15) opportunities were provided to respondents/plaintiffs to conclude their affirmative evidence and that too within a period of about one year, whereas only four (4) effective opportunities and that too

within short span of period were provided to petitioners/defendants No.2 and 3 to conclude their evidence and as such approach of trial Court was in haste while giving opportunity of leading evidence to petitioners/defendants No.2 and 3. He further urged that since on account of constraint of time, defendants No.2 and 3 could not conclude their evidence, impugned order dated 30.10.2019 be set aside and one effective opportunity to lead evidence may be provided to defendants No.2 and 3.

3. I have heard learned counsel for the petitioners/defendants No.2 and 3 and have carefully gone through the contents of petition, impugned order dated 30.10.2019 as well as record of the case.

4. Under Article 227 of the Constitution of India, the powers can always be exercised to correct an error in the order of the trial Court which causes injustice to a party. In the present case, while providing limited opportunities and that too within short span of time to lead evidence by petitioners/defendants No.2 and 3 by the trial Court, petitioners/defendants No.2 and 3 have remained devoid of their lawful right to lead evidence to defend their cause.

5. A bare perusal of miscellaneous order dated 31.10.2018 (Annexure P-3) passed by trial Court reveals that after completion of pleadings of the parties, issues were framed and the case was fixed for recording evidence of respondents/plaintiffs. A close scrutiny of miscellaneous orders dated 30.08.2019 and 19.09.2019 (Annexures P-4

and P-5) rendered by trial Court reveals that as many as fifteen effective opportunities and that too spanning within a period of about one year were provided to respondents/plaintiffs to conclude their affirmative evidence. However, while going through miscellaneous order dated 19.09.2019 (Annexure P-5) clearly reveals that first opportunity to lead evidence provided to petitioners/defendants No.2 and 3 spanned only for four days, as in terms of said order, affirmative evidence of respondents/plaintiffs was concluded on 19.09.2019 and then case was adjourned to 23.09.2019 for leading evidence by petitioners/defendants No.2 and 3. Another opportunity to lead evidence provided to petitioners/defendant No.2 and 3 spanned for a period of seven days, as is evident from miscellaneous order dated 23.09.2019 (Annexure P-6) and the case was adjourned to 30.09.2019 for above said purpose. On 30.09.2019 case was adjourned to 09.10.2019 for leading evidence by petitioners/defendants No.2 and 3, as is evident from miscellaneous order dated 30.09.2019 (Annexure P-7). On 09.10.2019 as evidence of defendants No.2 and 3 was not available, after affording one more opportunity, case was adjourned to 29.10.2019 for their evidence, subject to last opportunity, as is evident from order dated 09.10.2019 (Annexure P-8). On 29.10.2019 as Advocates had suspended Court work, trial Court had adjourned the matter to 30.10.2019 for recording evidence of defendants No.2 and 3, as is evident from order dated 29.10.2019 (Annexure P-9). Since petitioners/defendants No.2 and 3 could not lead

any evidence on 30.10.2019, vide order dated 30.10.2019 (Annexure P-10), their evidence was closed by Court order.

6. In view of above, it is quite apparent on the record that though as many as fifteen (15) effective opportunities were provided to respondents/plaintiffs by trial Court to conclude their evidence in affirmative and that too within a period of about one year, whereas on the other hand, trial Court was quite selective while providing opportunities to lead evidence in favour of petitioners/defendants No.2 and 3. It is pertinent to mention here that respondents/plaintiffs had concluded their evidence in affirmative on 19.09.2019 and as such four opportunities were provided to petitioners/defendants No.2 and 3 and that too within a period of forty (40) days to conclude their evidence. Reasonableness and equality of opportunities are the basic traits of Presiding Officer while conducting Court proceedings. A bare perusal of above said miscellaneous orders (Annexures P-3 to P-10) clearly depicts that trial Court did not render equal opportunity of hearing to defendants No.2 and 3 when the case was being adjourned for their evidence especially in view of the fact that on two/three occasions, case was adjourned within short span of time of either a day or four days or seven days for leading their evidence. In case any party has to summon a witness and that too from a distant place, in that eventuality, a reasonable time is required to be given to a party for above said purpose, whereas approach of trial Court in a given scenario does not appear to be reasonable and of equal

opportunity.

7. As a sequel to above said discussion, impugned order dated 30.10.2019 cannot be sustained in the eyes of law. Instant civil revision is allowed. Impugned order dated 30.10.2019, in terms of which, evidence of defendants No.2 and 3 was closed by Court order, the said order is set aside. Trial Court is directed to provide one effective opportunity and that too of reasonable time to lead evidence to defendants No.2 and 3 so that they may examine their witness(es).

8. Disposed of accordingly.

(LALIT BATRA)
JUDGE

07.11.2019
rimpal

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