

CR No. 8046 of 2019(O&M)

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

CR No. 8046 of 2019(O&M)

Date of decision: 13.12.2019

Sitara

... Petitioner

Versus

Hanif Kureshi

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Jangvir Singh Hooda, Advocate,
for the petitioner.

ARUN PALLI, J. (Oral)

The petitioner is a defendant, who is aggrieved by an order dated 4.10.2019 (Annexure P-2), vide which her evidence was closed by order, as also order dated 21.11.2019 (Annexure P-1), whereby even her application seeking recalling of earlier order and for granting another opportunity to lead evidence, has also been dismissed.

The respondent-plaintiff has filed a suit for possession by way of specific performance of an agreement to sell dated 9.2.2015 against the petitioner. As submitted by learned counsel for the petitioner, issues were framed on 9.4.2018, whereafter the matter remained pending for recording plaintiff's evidence, which was eventually closed on 20.5.2019, and the matter was posted for defendant's evidence on 29.7.2019. As per the case of the petitioner, on the adjourned date, i.e. 29.7.2019, her counsel was not

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available, and resultantly, she could not lead her evidence and the matter was adjourned to 10.9.2019. And, thereafter, she fell ill and owing to her ailment, she could neither appear nor lead her evidence on 10.9.2019, as also 19.9.2019. The matter was accordingly adjourned for 26.9.2019. However, on the said date, as the Presiding Officer was on leave, the matter was adjourned to 4.10.2019. But, again as the grandmother of the counsel for petitioner was seriously ill, he could not attend court, and resultantly evidence of the defendant was closed by order. But, without losing much time, the petitioner moved an application on 24.10.2019, praying for recalling of the order dated 4.10.2019 and for granting opportunity to lead and conclude her evidence, which too, as indicated above, has since been dismissed.

On the contrary, it is also true that despite availing number of opportunities as also last opportunity, and even subject to costs, petitioner failed to lead any evidence. So much so, she did not even furnish the list of witnesses she intended to examine.

But, be that as it may, even if it is assumed that petitioner was remiss and negligent in pursuing her cause, yet the fact remains that if she is not afforded at least one effective opportunity to lead and conclude her evidence, she may suffer an irreparable loss, which might also result in miscarriage of justice. Whereas, to settle the equities, the respondent could always be compensated with suitable costs.

Accordingly, without issuing notice to the respondent to avert any further delay, as also the expenses that he shall have to incur to defend these proceedings, the revision petition is disposed of, in the following terms:-

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- a) The petitioner shall be granted one effective opportunity to lead and conclude her entire evidence on the date that shall be specified by the trial court;
- b) In the event of default, the matter shall not be adjourned at any cost and no further opportunity shall be granted and the evidence of petitioner-defendant shall be deemed to have been closed; and
- c) This, however, shall be subject to costs of Rs. 15,000/-, to be deposited before the trial court, that shall be a condition precedent.

(ARUN PALLI)
JUDGE

December 13, 2019
AK Sharma

Whether speaking / reasoned:	YES
Whether Reportable:	NO