

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

CR No.404 of 2020

Date of decision: 12th February, 2020

Amarjit Singh

... Petitioner

Versus

Charanjit Singh Viridi & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Baljinder Singh, Advocate for the petitioner.

FATEH DEEP SINGH, J.

This is a revision petition against an order dated 24.09.2019 (Annexure P2) of the Court of learned Civil Judge (Senior Division), (NRI Cases), Jalandhar whereby evidence of the plaintiff (now petitioner) has been closed by order.

Upon hearing Mr. Baljinder Singh, Advocate for the petitioner and perusal of the records.

On filing of a suit by the present petitioner plaintiff Amarjit Singh against present respondents Charanjit Singh Viridi and others (then defendants) on 03.07.2017, the matter was adjourned to 21.07.2017 for evidence of plaintiff witnesses and on which date no PW was present and the Court adjourned the matter to 17.08.2017 by affording last opportunity. Similarly, on 17.08.2017 no plaintiff witness was present

and the Court subject to payment of ₹ 500/- as costs awarded last opportunity for 11.09.2017 and therefore, on that date last final opportunity was afforded as there was no witness of the plaintiff. The Presiding Officer because of leave had adjourned the matter after putting up the file on 10.10.2017 and which order is reproduced below:-

“Present:- None.

File taken up today as I shall be on leave on 11.10.2017. Case is adjourned for the purpose already fixed. Reader is directed to inform the parties/counsel accordingly.”

It is reflective from the above said order that no further date was fixed but the case was then taken up on 25.01.2018 and adjourned to 15.02.2018 for consideration on the application for proving documents by secondary evidence and thereafter, for the same very purpose on 15.02.2018 to 05.03.2018. Due to suspension of work by the lawyers on 05.03.2018, the case was adjourned to 23.04.2018 and on which date it was adjourned to 02.05.2018 for filing reply to the application and on 02.05.2018 on filing of the reply it was slated for 21.05.2018 for arguments on the application which stood dismissed on 21.05.2018 and the matter was adjourned to 26.07.2018 for plaintiff's witnesses. On 26.07.2018 no plaintiff witness was present and the case was adjourned to 29.08.2018 and so was the fate on 29.08.2018 when it was adjourned

to 09.10.2018 subject to payment of ₹ 500/- as cost and even on that date no PW was present and the matter was fixed for 27.11.2018.

Since the Presiding Officer proceeded on leave on 27.11.2018, the file was taken up on 28.11.2018 and adjourned to 15.01.2019. On 15.01.2019, one PW was present and examination in chief recorded and cross-examination was deferred on the request of the defendant and the case was adjourned to 22.02.2019 on which date the cross-examination of this witness was deferred and the matter was adjourned to 26.03.2019. On account of the officer proceeding on leave on 26.03.2019, the file was taken up on 27.03.2019 and adjourned to 02.05.2019 for evidence of the plaintiff and thereafter was adjourned to 16.07.2019 on which date PW1 was present but could not be cross-examined on account of the request of the defendant's counsel and on 29.07.2019, the next date of hearing, part cross-examination of PW1 was undertaken and the matter was adjourned to 20.08.2019 for remaining cross-examination. It is in-between, the parties sought an adjournment to enable them to compromise and on 09.09.2019 since the parties failed to compromise it was adjourned to 24.09.2019 for evidence of the plaintiff affording last and final opportunity and on 24.09.2019 following order was passed:-

“Present: Sh.Umesh Dhingra, Advocate for the plaintiff.

Sh. MS Sachdev, Advocate for defendants No.2 & 3.

Sh. Rajiv Kohli, Advocate for defendant No.1.

Today the case was fixed for evidence of the plaintiff but no witness is present. Perusal of the file shows that plaintiff examined PW1 on 15.01.2019 and thereafter this witness has been partly cross examined on 29.01.2019. No other witness is present in the Court today nor any list of witnesses has been filed for summoning the same. Issues in the present case were framed on 01.05.2017 and thereafter 29 effective opportunities have been taken by the plaintiff to conclude the evidence. Therefore, this Court finds no justification to adjourn the case any further for evidence of the plaintiff and the same is closed by order except for cross-examination of PW1 and he shall be produced in the Court on 10.10.2019 for the purpose of cross-examination.”

It is precisely this order which is under challenge.

On appreciation of the records and the submission of the counsel, it is well elucidated in the impugned findings that more than 29 effective opportunities have been availed of by the plaintiff to complete his evidence but he failed to do so and thus, no cause for another opportunity was made out and the Court has rightly done it so, however keeping in view that a party should not be denied access to justice on hyper-technicalities and it would subserve the ends of justice if one last and final opportunity is afforded to the plaintiff to complete his evidence

subject to payment of cost of ₹ 10,000/- which shall be a pre-condition and shall go to the Lawyers Welfare Fund of the District Bar Association, Jalandhar. The parties shall appear before the trial Court on 25.03.2020 on which date the plaintiff would complete his evidence and so the cross-examination by the defendant and no further opportunity for this purpose shall be afforded by the Court below under any circumstances.

The petition stands disposed off in those terms.

(FATEH DEEP SINGH)
JUDGE

February 12, 2020

rps

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No