

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

CR-490-2020 (O&M)
Date of decision : 23.01.2020

Dilbag Rai

...Petitioner

Versus

Rajinder Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Anmol Verma, Advocate for the petitioner.

ANIL KSHETARPAL, J. (ORAL)

The present revision petition has been filed under Article 227 of the Constitution of India against the order passed by the learned trial Court closing the evidence of the plaintiff as he did not come forward to offer himself for cross-examination on more than one occasion.

Learned trial Court has passed a detailed order which reads as under:-

“Today the case was fixed for PWs. It was the last opportunity and it has been specifically ordered that the evidence of the plaintiff shall be deemed to be closed by court orders in case of non compliance, however, despite said order plaintiff has failed to comply with the court orders. Today, the plaintiff was required to conclude his entire evidence besides subjecting himself to cross-examination. The plaintiff is present in the court since morning and was ready to get himself cross-examined but he did not. Besides him PW3 Gurmail Singh, Clerk UHBVNL

was present and examined. However, when after examination of PW3, the court has asked the plaintiff to subject himself to cross-examination as he has appeared in this case as PW1, he has moved an application for adjourning of the case on the ground that he is undergoing treatment of throat thyroid at Miri Piri Institute of Medical Science & Research, Sector 32 Chandigarh and is not able get himself examined today due to the said compelling circumstances and requested a date for the said purpose. Said adjournment has been highly opposed by the opposite counsels. Heard. File perused. A perusal of case file reveals that the case in hand is more than five years old. Same had been filed on 11.08.2014. The issues in this case have been framed on 03.07.2018 and since 08.08.2018 the case in hand is fixed for PWs. From 08.08.2018 till 03.01.2019, the plaintiff had availed seven effective opportunities including many last opportunities from the court for the purpose of conclude his evidence, however, for the reasons best known to him he did not examine even a single witness in his evidence. Thereafter, when on 3.1.2019 it was the last opportunity given to him by the court and it was ordered that if he fails to conclude his evidence then his evidence would be deemed to be closed by court orders, he changed his counsel and did not lead any evidence on that day as well, rather, he suffered a statement duly reduced into writing whereby he requested the court to give him one last date for his evidence and agreed that if on next date of hearing he fails to conclude his evidence, same shall be closed by court orders. Taking a lenient view learned predecessor of this court in view of, said statement of the plaintiff has deferred the case in hand to 30.01.2019, however, on that day also the plaintiff did not turn up and did not bother to conclude his evidence despite his

statement, rather, he moved an application for amendment of plaint. The said application ultimately was dismissed on 22.07.2019 by this court and then plaintiff was again given one opportunity to conclude his entire evidence on next date of hearing. It is on 07.08.2019 since 2014, he for the first time tendered his affidavit in his examination-in-chief. No other witness was present and his evidence was deferred for 30.08.2018 by giving him last opportunity subject to payment of costs of Rs.500/-. Thereafter, till 17.12.2019 he could be examined as two separate applications to set aside ex parte orders which were moved by different defendants have been filed consecutively and same have been disposed off. Thenceforth on 17.12.2019 again no PW was present and thereafter on 20.12.2019 plaintiff was present. However, he did not subject himself to cross-examination as he stated that his counsel is not available on said date of hearing. Then on 14.01.2020, he was present. The opposite counsels were ready to cross-examine him, however, he did not get himself to cross-examination again on the basis of his thyroid problem. Keeping in view his medical condition as stated by him, in the interest of justice, the case in hand was adjourned for today and last opportunity was given to him for said purpose. Today, as stated above since morning he is present. However, it appears he does not want to subject himself to cross-examination and that is why he has moved this application. It is pertinent to mention that said adjournment besides his counsel has been requested by him by arguing himself and from his arguments and tone of voice it was very much clear that he was no handicap due to the aforesaid problem. He was able to speak that too loudly. He did not appear to be under any kind of stress. On last date of hearing as well the situation was same but the court has taken a lenient view and has considered his request. Besides

this, defendant Rajinder Kumar has given a copy of complaint and brought to the notice of this court that on last date of hearing when the plaintiff requested a date on the basis of medical condition, he after going from the court fought with him and has given him sever beatings and therefore, the matter was reported to the police by him. Heard. Be that is it may, from the aforesaid discussions, it is, amply clear on record that the proceedings of this case have been dragged mostly on the part of plaintiff only and today from the conduct of the plaintiff it is clear that he does not want to subject himself to cross-examination. As stated by him, his operation is to done on 27th of January 2020 and he requested 2 months time adjournment despite the fact he is present in the court and is under no handicap. Hence, in view of the facts and circumstances aforesaid especially keeping in view the fact that the plaintiff was in the condition to depose before the court but he did not said adjournment cannot be given. Accordingly, evidence of the plaintiff is thereby closed by court orders. Now to come up on 21.01.2020 for evidence of the defendants.”

This Court has heard learned counsel for the petitioner and gone through the file.

In the considered view of this Court, there is no scope for interference in the impugned order passed.

Accordingly, the present revision petition is dismissed.

23.01.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No