

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

CR No. 634 of 2020

Date of Decision: 29.1.2020

Ram Asra (deceased through his LR Gurinderjit Singh)...Petitioner
Vs.

Jaspal Kaur and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Arun Jindal, Advocate for the petitioner.

RAJIV NARAIN RAINA, J. (Oral)

The matter is taken up for final disposal There is no necessity to issue notice to the respondent/plaintiffs as this order will cause no prejudice to them.

Having read the zimni orders and looking to the fact that the additional issue in the counter-claim filed by the defendants in the written statement in 2011 has been allowed in 2019 (dated 31.10.2019), the trial Judge seems to be in a bit of a hurry in closing the evidence of the defendants. They are left with only two witnesses to examine out of larger list of witnesses.

The zimni orders produced in this Court suggest that there is due diligence in the production of witnesses rapidly on short dates. The trial Judge has remarked that this cannot go on and, therefore, closed the evidence by the impugned order. The list of witnesses had been supplied earlier with the allowing of the additional issue for which the burden was on the defendants to prove. The impugned order does not

serve the ends of justice when only two witnesses remain to be examined for which another short accommodation could have been given on such terms as the trial Court thought it fit.

However, closing evidence is a serious matter where the defendants may be unable to unfold their story when transposed into the position of plaintiffs in the counter-claim which has to be tried like a suit by itself. It is not unknown to law that suits are dismissed and counter-claims are accepted, may be on entirely different principles.

Accordingly, the impugned order is set aside. The petitioner is granted two effective opportunities to produce the two remaining witnesses one after the other at short intervals. Any delay in cross-examination by the plaintiff will not be counted towards delay in recording statements of defendants' witnesses.

I do not find any reprehensible conduct of the respondents to cause willful delay, given their track record in the zimni orders and the rhythm in production of witnesses from time to time within a period of 2 months and 20 days. Costs follow the decree but not condonable conduct. If there is nothing remiss in the conduct, then there would be no reason to impose costs on the defendants with permission to produce the two witnesses and accordingly, this petition is allowed free of costs.

(RAJIV NARAIN RAINA)
JUDGE

29.1.2020

kv

Whether speaking/reasoned :
Whether reportable :

Yes/No
Yes/No