

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR 871 of 2020 (O&M)
Date of Decision: February 13, 2020

Gagan Gupta and anotherPetitioners

Versus

Jaswant SinghRespondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Vaibhav Sehgal, Advocate for the petitioners.

MAHABIR SINGH SINDHU, J.

CM 3395-CII of 2020

Application under Section 151 CPC for permission to place on record photocopies of zimni orders from 03.10.2019 in compliance of order dated 06.02.2020 as annexure P-3 (Colly) and exemption from filing its certified copies is allowed, as prayed for, subject to all just exceptions.

Registry is directed to tag the same at the appropriate place.

C.R. 871 of 2020

Present petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 18.09.2019 (P-2) passed by learned Civil Judge (Junior Division), Ludhiana, vide which evidence of the petitioners/ plaintiffs was closed by the Court.

Since the impugned order is very brief, therefore, the same is extracted hereunder:-

“No PW is present. Case was fixed for plaintiff evidence more than 4 years back. Plaintiff have already availed more than 37 opportunities to conclude its evidence. Counsel for plaintiff requested for adjournment which is strongly opposed by

counsel for defendant. Keeping in view these circumstances, there is no justification to grant further opportunity to plaintiff to lead its evidence. As such, plaintiff evidence stands closed by order. Let case stands adjourned to 03.10.2019 for defendant evidence.”

It is contended by learned counsel for the petitioners that PW1 was very much present on various occasions, but his cross-examination was deferred on the request of defendant/ respondent for want of relevant record, which was to be produced by Kuldip Singh, Clerk, Office of Sub Registrar, as well as Mohinder Singh, and instead of taking any coercive steps against them, learned trial Court closed the evidence of the plaintiffs/petitioners, causing a great prejudice to their case. Further contends that when bailable warrants were issued against Kuldip Singh and Mohinder Singh, then it was obligatory for the learned trial Court to secure their presence by way of coercive steps and in support of his plea relied upon single Bench judgment of this Court reported as 2014 (3) PLR 92, **Rakesh Khanna and others Vs. Mohini Khanna and others.**

Heard learned counsel for the petitioners and perused the paper-book.

It transpires that suit for declaration and permanent injunction was filed by the petitioners on 10.09.2012 and on the pleadings of both the parties, issues were framed by learned trial Court on 04.03.2015.

Paper-book reveals that after framing of the issues, plaintiffs/petitioners were afforded various opportunities to lead their evidence i.e. on 29.04.2015, 25.08.2015, 09.09.2015, 23.09.2015, 09.10.2015, 03.11.2015, 26.11.2015, 17.12.2015, 15.01.2016, 18.02.2016,

12.04.2016, 18.05.2016, and thereafter on 16.06.2016, while granting last opportunity, learned trial Court passed the following order:-

“PW1 Gagan Gupta partly cross-examined. On request case is adjourned to 18.08.2016 for remaining cross-examination of these witnesses and entire remaining PWs subject to the last opportunity is granted. Counsel for the plaintiff has requested for issuance of dasti summons. Dasti summons to the witnesses be issued to witness sought to be examined, subject to the deposit to the diet money.”

Thereafter again, learned trial Court on 18.08.2016 granted one last opportunity to the petitioners at their own responsibility, in the following terms:-

“No PW present. On request of counsel for plaintiff case is adjourned to 07.09.2016 for PW subject to last opportunity at own responsibility.”

Learned trial Court without caring for the above factual position, again granted numerous opportunities to the petitioners for leading their evidence on 07.09.2016, 04.10.2016, 05.11.2016, 18.11.2016, 09.01.2017, 22.02.2017, 21.03.2017, 17.04.2017, 23.05.2017, 14.07.2017, 28.08.2017, 18.10.2017, 29.11.2017, 15.12.2017, 24.01.2018 and 14.02.2018. Since on 14.02.2018 also, no PW was present and learned trial Court again granted last opportunity at their own responsibility while passing the following order:-

“No PW is present. Counsel for plaintiff stated that they want to summon Registry Clerk, from the office of Sub Registrar, East But there office is close today due to holiday. As such on request, the case is adjourned to 16.03.2018 subject to last opportunity at their own responsibility. Although for the

sake of assistance dasti summons be issued on the deposit of diet money and process fee.”

Thereafter, again learned trial Court granted various opportunities to the petitioners and some of the relevant orders are extracted as under:-

“16.03.2018

PW7 Kuldip Singh is present and partly examined in chief. However, further examination in chief is deferred for want of complete record for 11.4.18 for which date the witness is bound down and is directed to bring complete record. PW Gagan Gupta plaintiff is also present for his cross examination but counsel for defendant sought adjournment. Accordingly case is adjourned to 11.4.18 for cross examination of plaintiff/remaining Pws at own responsibility.”

12.07.2018

PW Kuldip Singh, Record Clerk was bound down for today. But despite this he did not come present. As such he be now summoned through bailable warrants in sum of Rs.5000/- with one surety in like amount for 09.08.2018. Also, remaining plaintiff witnesses in list of witnesses be summoned for the date fixed.

09.08.2018

Summons issued to witnesses received back unserved with the report that date is short. Now summons to witnesses as per previous order be issued for 28.09.2018. Also, to come upon date fixed for Pws.

29.11.2018

Mohinder Singh has come present but perusal of the file shows that he is already examined. As such he is discharged. Also, Gujjar Singh has appeared on behalf of Kuldeep Singh stating that he is on leave for today and sought adjournment. As such he be now intimated through Gujjar Singh regarding the next date. Now to come upon 24.01.2019 for Pws.

07.03.2019

No PW is present. On request, case is adjourned to 02.04.2019 for Pws. Dasti summons be issued, if demanded for service upon witnesses.

04.05.2019

No PW is present. On request the case is adjourned to 15.05.2019 for Pws. Dasti summons be issued if required, subject to last opportunity.

03.07.2019

File has already been received by transfer. It be registered. On the perusal of file it is observed that case is fixed for evidence of plaintiff since from 04.03.2015. Plaintiff had availed 34 opportunities of his evidence. On the perusal of file it is observed that PW 7 Kuldeep Singh, Clerk, from the Office of Sub-Registrar, Ludhiana had been partly examined in chief and his further examination in chief was deferred for want of record and he was directed to bring the complete record vide order dated 16.03.2018 and thereafter, he has also not come present and non-bailable warrants of arrest ordered to be issued against Kuldeep Singh vide order dated 28.09.2018. Now proceedings further with the case. Let non-bailable warrants of arrest be issued against Kuldeep Singh for 23.07.2019. Remaining evidence of plaintiff, if any, be also produced on the date fixed.

23.07.2019

PW Gagan Gupta is present, but could not be examined for want of record. He is bound down for the next date. Let case stands adjourned to 09.08.2019 for cross-examination of PW Gagan Gupta & remaining Pws. Non-bailable warrants issued against accused Kuldeep Singh has been received back unexecuted. Let fresh non-bailable warrant be issued against him for 09.08.2019.

09.08.2019

Non-bailable warrants issued against PW Kuldeep Singh has been received back unexecuted. Let fresh non-bailable warrant be issued against him for 23.08.2019. Today case was fixed for plaintiff evidence, issues in this case framed on 04.03.2015 i.e. more than 4 years back, the plaintiff has failed to conclude its plaintiff evidence. Keeping in view these circumstances the last opportunity afforded to plaintiff to conclude plaintiff evidence. It is further made clear that no further opportunity will be granted to plaintiff to lead its evidence, if no evidence is produced then appropriate order will be issued against plaintiff.”

After passing of the impugned order, the case was adjourned by learned trial Court to 03.10.2019, for recording the evidence of the respondent. During the course of hearing, learned counsel for the petitioners acknowledged that for evidence of defendant/ respondent, case was adjourned on 8 (eight) occasions i.e. 03.10.2019, 19.10.2019, 08.11.2019, 21.11.2019, 04.12.2019, 16.12.2019, 09.01.2020, 21.01.2020 and now the same is pending for 17.02.2020. Despite the above factual position, the present petition has been filed on 03.02.2020, while taking a somersault that evidence of the petitioners was erroneously closed on 18.09.2019. In the opinion of this Court, this petition can be termed, not only an after-thought exercise, but unhesitatingly, complete misuse of the process of the Court.

The facts and circumstances discussed hereinabove, make it apparently clear that learned trial Court had deferred the hearing of matter time and again, without going through the previous zimni orders and virtually created a monument of adjournments which is not appreciable.

Learned trial Court instead of granting whole-sale adjournments to the respective parties ought to have proceeded in the matter in a meaningful way so that the resort of filing the present frivolous petition could have been avoided. Since the petitioners have already been granted more than the required number of opportunities by learned trial Court to conclude their evidence, therefore, this Court, does not find anything wrong with the impugned order while closing their evidence.

The judgment relied upon by learned counsel for the petitioners in **Rakesh Khanna's** case (supra), is not helpful, in any manner, due to the following reasons:-

- i) More than 35 opportunities were granted to the petitioners to conclude their evidence, including last opportunities on 3 occasions as well as issuing the warnats, thus, learned trial Court was more than magnanimous in their favour;
- ii) Impugned order for closure of the evidence of the petitioners was passed on 18.09.2019 and thereafter, the case was adjourned on 8 occasions for recording the evidence of respondent; whereas present petition has been filed on 03.02.2020.

In view of the facts and circumstances discussed hereinabove, this Court is of the firm opinion that the impugned order is perfectly legal and justified; does not require any interference while exercising powers under Articles 227 of the Constitution. Since the present petition is found to be complete misuse of the process of the Court, therefore, the same is dismissed with costs of Rs.25000/- to be deposited by the petitioners with

the District Legal Services Authority, Ludhiana, within a period of four weeks from today.

The above observations may not be construed as an expression of opinion on the merits of the case.

Learned trial Court shall proceed in the matter expeditiously.

Copy of this order be sent to learned District Judge, Ludhiana, with a request to sensitize the officer (s) concerned in such like matters.

February 13, 2020
sanjay

[MAHABIR SINGH SINDHU]
JUDGE

Whether speaking/reasoned
Whether reportable?

yes/no
Yes/no