

122

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

**CR No. 945 of 2020 (O&M)
Decided on: 10.02.2020**

Gurpreet Singh

....petitioner

versus

Gurmail Kaur (deceased) through her LRs and Ors.Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Mohd. Yousaf, Advocate
for the petitioner.

RAJBIR SEHRAWAT, J.(Oral)

CM-3243-CII-2020

Application is allowed, as prayed for.

CR No. 945 of 2020

This petition has been filed by the plaintiff/petitioner challenging the order dated 29.10.2019 passed by the trial Court; whereby; the application filed by the defendant for ordering closure of the evidence of the plaintiff has been allowed and the evidence of the plaintiff/petitioner has been closed.

It is submitted by the counsel for the petitioner that although the trial Court has recorded that earlier also the evidence of the petitioner was closed vide order dated 21.08.2018; however, on an application moved by the plaintiff/petitioner, the said order was recalled by the trial

Court and it was ordered that the plaintiff/petitioner shall be granted three effective opportunities to conclude the entire evidence. The petitioner made earnest effort to ensure the presence of the witnesses, which he wanted to examine. The petitioner made every effort to conclude his entire evidence within three effective opportunities, as granted by the trial Court, however, the same could not be materialised because three of the witnesses happened to be the official witnesses. These three witnesses, had come as witness; without relevant record, therefore, the case had to be adjourned. On 10.09.2019, witness of the plaintiff i.e. Tarsem Singh was very much present along with complete record. However, the examination of this witness was deferred by the Court order; with a further order that he shall bring the record as and when called by the Court. But, before the trial Court could call this witness again, the defendants moved an application for closure of the evidence of the plaintiff/petitioner. Allowing that application, the impugned order had been passed. He has further submitted that since the petitioner himself is not at fault, therefore, the petitioner deserves to be granted an opportunity to complete his evidennce. Still further, it is submitted that now the petitioner want to examine the Office Kanungo from O/o Deputy Commissioner, Ludhiana, concerned Patwari and want to produce himself as the witness. Besides these, three witnesses no other witness is to be examined by the plaintiff. Hence, it is prayed that the impugned order be set aside, and the petitioner be granted an opportunity to lead the evidence mentioned above.

Having heard the counsel for the petitioner, this Court finds that the petitioner had been granted sufficient opportunities to complete his evidence. Since the petitioner had not led the evidence within time, therefore, earlier also the evidence of the petitioner was closed by the

order of the Court. Despite having been granted three opportunities by the Court, the petitioner still failed to complete his evidence within time. Therefore, the order passed by the trial Court cannot be taken as entirely wrong. However, the facts also disclose that the petitioner is not entirely in default for not completing the evidence within three opportunities, which were granted by the trial Court after recalling the earlier order. As the record shows; the petitioner did make effort to produce the witnesses. The witnesses were; in fact; produced as well. However, they had come without the relevant record and therefore the case had to be adjourned. Not only this, in case the special Kanungo-Tarsem Singh, he had even come present with the complete records and was partly examined as well, however, even this evidence was not completed on the day when he was present in the Court. The order passed by the trial Court on 19.09.2019 shows that it was ordered that the witness Tarsem Singh shall come present with the record as and when he was to be called by the trial Court. However, no subsequent order shows that he was ever called by the trial Court to produce the record. For this, surely the plaintiff/petitioner cannot be blamed. Hence, this Court is of the view that it would not be unjustified if the petitioner is granted further opportunities to complete his entire evidence, however, by putting him to an appropriate financial burden.

In view of the above, the present petition is disposed of by modifying the impugned order with a direction that the petitioner be granted two effective opportunities to complete his evidence in which he wants to produce the Patwari, Kanungo and himself as witnesses, however, subject to payment of Rs.15000/- as cost. The cost is ordered to

within two weeks.

It is further clarified that the trial Court shall not entertain any evidence on behalf of the plaintiff/petitioner, unless the petitioner produces before that Court, the receipt of having deposited the cost as ordered above.

10th February, 2020
Manju

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No