

S.No.119

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

CR No.1076 of 2020

Date of Decision:14.02.2020

Purushottam

.....Petitioner

Vs.

Gram Panchayat of Village Patan

.....Respondent

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Jitender K. Sehrawat, Advocate for the petitioner.

Rajbir Sehrawat, J.(Oral)

This is a petition filed by the plaintiff in the suit, challenging the order dated 05.02.2020 passed by Civil Judge (Junior Division), Hisar; vide which the application filed by the defendant in a suit to recall the earlier order whereby its evidence was closed, has been allowed and the defendant has been permitted to lead the evidence in the suit.

Referring to the order dated 27.11.2019, passed by the trial Court, learned counsel for the petitioner has submitted that it is categorically recorded in the earlier order that neither the earlier imposed cost was paid by the defendant nor any evidence was produced before the Court despite being last opportunity. Hence, the Court had rightly closed the evidence of the defendant by order of the Court. So far as the impugned order is concerned, it is submitted that, the trial Court does not have the necessary jurisdiction to review its own order. Even if the power to review is assumed in favour of the trial Court, still the criteria for review, as prescribed under Order 47 CPC is altogether different. The said provision cannot be used for recalling an order. Still further, it is submitted that finding in a different situation, the trial Court has taken recourse to

Section 151 CPC to recall the earlier order, despite the fact that the review of the earlier order could not have been done by the trial Court under Order 47 of CPC. The trial Court has resorted to Section 151 CPC in contravention of the other specific provisions contained in the CPC. The power under Section 151 CPC could have been exercised by the trial Court, only in case there was no statutory provision for dealing with the situation, and not to by-pass the mandate of law. If the defendant was aggrieved against the order of closure of the evidence, it could have approached in revision before the higher Court. Therefore, the order passed by the trial Court is illegal.

Having heard learned counsel for the petitioner and perused the case file, this Court finds that the defendant in the suit is the Gram Panchayat; represented by the Sarpanch. Therefore, there is every possibility that the suit was not being looked after by the defendant -Sarpanch with the same seriousness which a private individual could have shown qua his own private case. Hence, some discretion has to be shown in favour of the defendant/ Gram Panchayat in this regard. Accordingly, even if the Court below has deviated a bit from the prescribed procedure, this Court rectifies the said deviation by ratifying the order passed by the trial Court.

Accordingly, the present petition is disposed of with the direction that the defendant – Gram Panchayat be permitted to lead its evidence, however, in accordance with law.

February 14, 2020
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No