

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.1134 of 2020

Date of Decision:17.2.2020

Mohd.Iqbal

...Petitioner

Versus

Sherla @ Sher Mohd. and others

...Respondents

CORAM: HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr.Ashish Gupta, Advocate
for the petitioner

RAJIV NARAIN RAINA, J. (ORAL):

1. Prayer in this petition is for setting aside the order dated 6.2.2020, passed by the learned Additional Civil Judge (Senior Division), Ferozepur Jhirka, vide which evidence of the petitioner has been closed by order.

2. Heard learned counsel for the petitioner.

3. But for the evidence of the stamp vendor, remaining evidence has been led by the petitioner, who is the plaintiff in the suit for possession by way of a specific performance of an agreement of sale of immovable property. The plaintiff made an application for summoning five witnesses (Pg.25) (Annex.P3) to depose for him. Four of these witnesses have been examined while the fifth could not be served as the process server who took the summons was informed at the spot that the witness was away to Faridabad on some personal work. This was on 5.2.2020 and the copy of the service report of even date is at Pg.28 of the paper-book, which records as follows:

“On dated 5.2.2020 I went at the spot and tried to trace

Dinesh Mangla, Stamp Vendor, but he was not found present at the spot. Co-employees were found present at the spot and they said that he has gone to Faridabad and do not know when he shall come back. Report submitted please.”

4. The report was submitted on 5.2.2020 and the next date of court hearing was on the following day i.e. 6.2.2020 when the evidence was abruptly closed, giving rise to this petition under Article 227 of the Constitution, praying that order be set aside and an opportunity be granted to the petitioner to make another attempt to serve him through court process. This stamp vendor had his signatures on the stamp paper on which the contract of sale was executed between the parties. The learned Additional Civil Judge (Senior Division), Ferozepur Jhirka has passed a short order, which is impugned, to the following effect:

“Previous cost of Rs.200/- has been deposited, vide receipt No.00773 dated 6.2.2020. One PW namely Samim Ahmed is present and examined. No other PW is present. The plaintiff has already availed numerous opportunities for evidence but has failed to conclude the same. No ground for further adjournment is made out. Evidence of plaintiff is hereby ordered to be closed. Now to come upon 11.2.2020 for evidence of the defendants.

5. In the face of the report dated 5.2.2020, the reasonable thing for the Judge was to have given another date by issuing fresh process to the stamp vendor for his appearance to enable the petitioner to conclude his evidence to his entire satisfaction before closing it. In the circumstances in which the order was made I find undue haste which really ends up doing injustice to the petitioner for no fault of his. He had taken the steps he was

required to take to bring the stamp vendor to court but he could not ensure that the summons would reach their target through the process serving agency on which trust is reposed by litigants. Neither was the process server at any fault. He could have been asked by the court to make another attempt with the same summons twice or thrice to try and serve the witness.

6. It is also not a case for costs to be imposed by this Court upon the petitioner to reopen his evidence by setting aside the order to afford him the opportunity of completing his evidence. As that course of action would work as further injustice and punishment for no fault of his or of the process server who went to serve the summons to find the witness missing. The trial court should have thought of all this and ought to have contained itself from acting impetuously on the spur of the moment. This is an improper judicial reflex. There were many alternatives available to the judge to enforce the attendance of the last witness.

7. This Court is not for a moment on the past conduct of the plaintiff prior to the application for production of evidence through the five witnesses as none has been spelled out in the order and neither am I interested in calling for all the order sheets, but I would venture only to say that at least the trial court was unjustified in passing the impugned order out of the blue without any provocation. In a suit for specific performance the testimony of a stamp vendor is valued and this right and reasonable opportunity this Court cannot deny to the petitioner as serious prejudice will be caused to the petitioner in the trial.

8. As a result of what has been said above, the petition is allowed. The impugned order dated 6.2.2020 is set aside to serve the ends of justice.

The learned trial court would consider granting the petitioner sufficient

opportunity to lead his remaining evidence by accommodating the process serving agency to serve the stamp vendor even if it required to be done once or twice in order to ensure that he appears and stands in the witness box. In case all effort fails, the trial Court would still have the legal option of summoning him or enforcing his attendance by court order in order to do justice. Further steps be taken accordingly.

February 17, 2020
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(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes