

S.No.124

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

CR No.1398 of 2020 (O&M)

Date of Decision:27.02.2020

Madan GopalPetitioner

Vs.

Bikramjit SinghRespondent

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Hardeep Singh, Advocate for the petitioner.

Rajbir Sehrawat, J.(Oral)

This is the petition filed by the plaintiff in the original suit challenging the order dated 17.12.2019 passed by the trial Court, vide which the evidence of the petitioner/ plaintiff has been closed by order of the Court.

The parties herein are referred to as plaintiff and defendant as in the original suit.

It is contended by counsel for the petitioner that the plaintiff has filed a suit for recovery, in which the issues were framed by the Court on 28.02.2019 only. Thereafter, for two dates, the petitioner could not produce evidence. On third date, the Presiding Officer was on leave, therefore, the case was adjourned. On 04.07.2019, the petitioner could not lead evidence because he had not got the certified copies of the documents which were to be tendered in evidence by him. Accordingly, the case was adjourned for 26.07.2019. On this date, the petitioner did produce one witness. However, his examination-in-chief could not be completed for want of record. Accordingly, the witness was bound down for the next date.

However, on the next date, once again, the case had to be adjourned

because Presiding Officer of the Court had been transferred from that place. Thereafter, on two dates, the petitioner could not produce the witnesses, therefore, the cost of Rs.500/- was imposed upon him. However, before the next date of hearing, again the file was taken up by the Presiding Officer because she was to avail the leave on the date fixed in the case. On the next adjourned date, the petitioner had again produced one witness. His examination-in-chief was completed. However, the counsel for the defendant had sought adjournment for completing the cross-examination of the said witness. The case was adjourned for 28.11.2019. However, two days before this date, the real brother of the petitioner had expired, therefore, the petitioner could not attend the Court. Accordingly, the case was adjourned for 17.12.2019, by granting last opportunity. Unfortunately, on that date also, the last rites of one of the relatives of the petitioner, namely, Somnath were to be performed. Hence, the petitioner could not produce his witness. Accordingly, although the impugned order has been passed, yet the fault of the petitioner is not intentional. It is further submitted by the counsel, that rather, the petitioner has been making sincere effort to produce the evidence before the trial Court. Even the necessary applications were filed for summoning the official witnesses. Hence, the petitioner deserve more opportunities to complete his evidence.

Having heard the counsel for the appellant and having perused the file, it is clear, and also the case file shows; that the petitioner has availed several opportunities to lead his evidence yet he had not completed his evidence. However, another fact which deserves to be noticed is

that the case was adjourned on 2-3 dates because of the exigencies of the Court also. Besides this, the real brother of the petitioner is also stated to have expired in the interregnum, which could have; possibly; shaken the petitioner. The case is still at the initial stage of the evidence of the plaintiff only. The defendant has not started any evidence as yet. Therefore, it would not be unjustified if the petitioner is granted more opportunities to lead his evidence, however, by putting him to appropriate financial burden.

In view of the above, the present petition is allowed and the impugned order is set aside. The trial Court is directed to grant three effective opportunities to the petitioner to lead his entire evidence, at his risk and responsibilities, subject to payment of Rs.10,000/- as cost. The cost is ordered to be deposited with Poor Patients Welfare Fund, PGI, Chandigarh, within a period of two weeks.

It is further clarified that the petitioner shall be granted opportunities mentioned above, only after he produces before the trial Court; the receipt of having deposit the cost, as ordered above.

February 27, 2020
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned
Whether Reportable

Yes/No
Yes/No