

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

110

CR-2084-2020

Date of decision: 29.07.2020

Municipal Corporation, Gurugram

.....Petitioner

Versus

Roshini and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Pritam Singh Saini, Advocate for the petitioner.

ARUN KUMAR TYAGI, J (ORAL)

(The case has been taken up for hearing through video conferencing.)

The petitioner-Municipal Corporation, Gurugram has filed the present revision petition under Article 227 of the Constitution of India for quashing/setting aside order dated 22.01.2020 passed by learned Civil Judge (Junior Division), Gurugram in **Civil Suit No.2649 of 2016 titled 'Roshni Vs. C.R.O. Cum Tehsildar, Gurgaon and others'** whereby evidence of defendant No.4 was closed.

Briefly stated the facts relevant for disposal of the present revision petition are that respondent No.1-plaintiff-Roshni, claiming herself and her brother Rohtas to be in possession of land measuring 1 kanal 8 marla and 6 sarsai situated within the revenue estate of village Behrampur, Tehsil and District Gurugram as Bhondedar, filed suit for declaration and mandatory injunction against the petitioner and proforma respondents No.2 to 4. The suit was contested by the petitioner by filing written statement. Issues were framed on 02.03.2017. Evidence of the petitioner was closed on 22.01.2019 and the case was adjourned to 06.03.2019 for the evidence of the

defendants. No evidence of the defendants was present on 06.03.2019 and 15.05.2019. Examination-in-Chief of DW-1 Harkesh produced by the petitioner was recorded on 21.08.2019 but his cross-examination was deferred to 25.09.2019 and thereafter to 22.01.2020. DW-1 Harkesh could not appear on 22.01.2020 on which evidence of the defendants was closed by the Court and case was adjourned for rebuttal evidence.

Feeling aggrieved the petitioner has filed the present revision petition.

In view of the nature of relief sought and to be granted, issuance of notices to respondent No.1-plaintiff and proforma respondents No.2 to 4 is considered to be unnecessary and is accordingly dispensed with.

Learned Counsel for the petitioner has submitted that witness of defendant No.4 was present on 21.08.2019 and also on 25.09.2019 but his cross-examination was not conducted by the learned Counsel for the plaintiff. The witness of defendant No.4 could not appear on 22.01.2020 due to some unavoidable circumstances on which the evidence of the defendants was closed without granting any further opportunity for his presence. Order closing evidence of the defendant No.4 suffers from material illegality and may be set aside and defendant No.4 may be granted one opportunity to conclude its evidence.

In the present case, witness of defendant No.4 was present for cross-examination on two occasions on 21.08.2019 and 25.09.2019 but on both the occasions the witness of defendant No.4 was not cross-

examined by learned Counsel for the plaintiff. The witness could not appear on 22.01.2020 on which date evidence of defendant No.4 was closed by Court order.

The harassment caused to witnesses by un-necessary adjournments and practice of deferring cross-examination of a witness and giving long adjournment for such cross examination have been deprecated by Hon'ble Supreme Court and this Court in numerous criminal cases. (See *State of U.P. Vs. Shambu Nath Singh : 2001(2) RCR (Criminal) 309*; *Vinod Kumar Vs. State of Punjab : 2015 (1) RCR (Criminal) 647* and *Bhajan Kaur @ Harbhajan Kaur Vs. State of Punjab : 2018 (1) RCR (Criminal) 879*). The reasons for taking effective steps for curbing the same are equally applicable to civil cases. The witnesses are harassed/tired out by seeking repeated adjournments and intimidated or bribed and thereby won over by the opponent during the period of long adjournments. An analysis of cases where evidence is closed by court order would show that in good number of them adjournments are sought when witnesses appear and opposed when they are unable to appear and the Court is persuaded to close evidence by court order without considering the reasons for such absence and visualizing the injustice caused. As observed by Hon'ble Supreme Court in *State of Punjab Vs. Shamlal Murari : AIR 1976 Supreme Court 1177*, the Courts are to do justice and not to wreck this end product on technicalities.

In the present case the anxiety of the trial Court to dispose of the case with expedition is appreciable but the anxiety can not be allowed to extend to the limit of doing injustice by closing evidence in

mechanical manner without considering the reason for absence of the witness and giving reasonable opportunity to secure his presence particularly when there is nothing in the impugned order to show any neglect/misconduct/malafides/dilatory tactics on the part of defendant No.4. Once the witness of defendant No.4 had appeared for his cross-examination in the case on two dates and his cross-examination was deferred on request of the learned Counsel for the plaintiff, evidence of defendant No.4 could not be closed without giving reasonable opportunity for securing his presence.

Consequently, the impugned Order closing evidence of the defendant No.4 suffers from material illegality and is liable be set aside and defendant No.4 is entitled to grant of one opportunity to conclude its evidence. For the delay and inconvenience caused the plaintiff can be compensated by payment of costs.

In view of the above, the revision petition is allowed and impugned order dated 22.01.2020 passed by learned Civil Judge (Junior Division), Gurugam is set aside. Learned Civil Judge (Junior Division), Gurugam is directed to give one effective opportunity to the petitioner-defendant No.4 to produce DW-1 Harkesh for his cross-examination by the plaintiff and proforma defendants, on payment of Rs.10,000/- as costs by defendant No.4 to the plaintiff, on date to be fixed after resumption of normal functioning of the Court/easing out of the restrictions imposed to prevent spread of infection of Covid-19.

29.07.2020

Kothiyal

(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No