

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

114

CR-1012-2022

Date of decision: 07.05.2022

Kulbhushan Phogat

.....Petitioner

Versus

Usha Nagpal and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Shalender Mohan, Advocate for the petitioner.

MANJARI NEHRU KAUL, J. (ORAL)

The instant revision petition has been preferred under Article 227 of the Constitution of India for setting aside the order dated 24.02.2022 (Annexure P-6) passed by learned Civil Judge (Jr. Divn.), Hisar vide which the evidence of the petitioner/defendant was closed by order.

Learned counsel for the petitioner *inter alia* submits that while passing the impugned order the trial Court did not grant the petitioner/defendant enough opportunity to lead his evidence. He further submits that the plaintiffs closed their evidence on 11.07.2019 after which the case was adjourned to 21.08.2019 for defendant's evidence. Since the petitioner was residing in USA and had undergone surgery on his shoulder, he was unable to travel to India for which an application for exemption dated 20.01.2020 (Annexure P-5) was also moved by him through his friend which was duly allowed. However, later on the petitioner could not travel to India on account of the restrictions imposed on international travel due to the outbreak of the covid-19 pandemic. Resultantly, the petitioner moved an application

(Annexure P-7) seeking permission to get himself examined as a witness through video conferencing, which was allowed vide order dated 17.09.2021. However, the petitioner was unable to get himself examined even through video conferencing for reasons beyond his control including his medical ailments. Learned counsel prays that in the aforementioned circumstances, one last opportunity may be granted to the petitioner to lead his evidence in the interest of justice.

I have heard learned counsel and perused the material placed on record.

It is a matter of record that after the evidence of the plaintiff had been closed, the case was fixed for defendant's evidence on 21.08.2019. Even though a number of opportunities which are detailed hereinunder, were granted to the petitioner to lead his evidence, he failed to do so and hence his evidence was closed by order on 24.02.2022.

On 21.08.2019 no defendant witness was present as a result of which the case was adjourned by the trial Court to 15.10.2019. On the adjourned date, no defendant witness was present and hence the case was again adjourned to 28.11.2019. Thereafter, on 28.11.2019, no witness was examined and again the case was adjourned to 21.01.2020 for defendant's evidence after giving last opportunity to him. On 21.01.2020 application (Annexure P-5) was moved on behalf of the petitioner wherein exemption was sought on medical grounds which was allowed and the case was then adjourned to the next date i.e. 31.03.2020. Thereafter, on account of outbreak of covid-19, travel restrictions were imposed due to which the petitioner was unable to

travel to India. After the Courts resumed normal functioning post covid-19 pandemic, even then no witness was examined by the petitioner in defence evidence. The position was the same on the next date of hearing i.e. 17.09.2021 as no defendant witness was present, however, an application (Annexure P-7) was moved on the said date by the petitioner for permitting him to be examined as a witness through video conferencing which was allowed on the same day. Thereafter, the case was adjourned to 18.10.2021. From 18.10.2021, the case was adjourned to 3 dates and it was only thereafter as no defendant witness was examined, the impugned order was passed on 24.02.2022 wherein the petitioner-defendant's evidence was closed by order.

It is, thus, very evident that even after being granted enough opportunities including permission to examine himself through video conferencing, the petitioner failed to get himself examined. Learned counsel for the petitioner has miserably failed to satisfy this Court qua the reasons which were beyond his control due to which he was unable to lead his evidence. This Court has no hesitation in observing that the petitioner was given sufficient opportunities, however, he failed to lead his evidence. The trial Court, therefore, cannot be faulted with, for closing the evidence of the petitioner-defendant by order. As a sequel to the above, the petition being devoid of any merit is dismissed.

07.05.2022

Vinay

**(MANJARI NEHRU KAUL)
JUDGE**

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