

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

**CR-2027-2020 (O&M)
Date of decision: 29.07.2022**

Rajinder Singh

... Petitioner

Vs.

Paramjit Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Gurcharan Dass, Advocate for the petitioner.

Mr. Somnath Tayel, Advocate for
Mr. D.S. Sobti, Advocate for respondent No.1.

Ms. Sukhan Rangi, Advocate for respondents No.2 to 4.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for setting aside the order dated 28.11.2019 passed by the trial Court, vide which evidence of the petitioner-plaintiff was closed as well as the subsequent order dated 12.02.2020, vide which an application filed for recalling of the order dated 28.11.2019 was dismissed.

Brief facts of the case are that the petitioner filed a suit for declaration to the effect that he is owner in possession of the suit property.

Learned counsel for the petitioner submits that the case was listed for evidence of the petitioner-plaintiff and he was in judicial custody from 30.03.2018 to 06.02.2020, when he was granted bail by this Court vide order

dated 06.02.2020 passed in CRM-M-36166-2018. Learned counsel has referred to the said order, wherein the petitioner was shown to be in custody in FIR No.71 dated 24.07.2016 under Sections 302, 420, 465, 467, 471, 120-B & 182 IPC, registered at Police Station PAU, District Ludhiana.

Learned counsel further submits that immediately, after the petitioner was granted bail, coming to know about first order, closing his evidence, he moved an application for recalling of the same, which was declined, technically on the ground that the petitioner has not given details of FIR, in which he was in judicial custody. It is further submitted that in view of position explained by the petitioner that he was unable to appear before the Civil Court and produce his evidence, due to bonafide reason, as he was in judicial custody and subsequently, when an application was moved, explaining his handicap with regard to appearance before the Civil Court to lead the evidence, the Civil Court did not consider the same in correct perspective and even dismissed the application for recalling of the order dated 28.11.2019, by passing the subsequent order dated 12.02.2020.

Learned counsel also submits that the petitioner wants to examine three other witnesses, as he had already been examined and partly cross-examined.

Learned counsel for the respondents have, however, submitted that no proper explanation is given by the petitioner-plaintiff to lead and conclude the evidence, as the application filed before the Civil Court for recalling the

order dated 28.11.2019 was evasive and no details were given.

After hearing learned counsel for parties and going through the order dated 06.02.2020, granting bail to the petitioner, it is apparent that the petitioner remained in custody from 30.03.2018 to 06.02.2020, when he was granted bail, therefore, he could not appear before the Civil Court either for cross-examination or leading other three witnesses.

In view of the above, this petition is allowed and the impugned orders dated 28.11.2019 and 12.02.2020 are set aside.

The trial Court is directed to afford one effective opportunity to the petitioner-plaintiff to lead his evidence i.e. cross-examination of the plaintiff as well as three other witnesses.

Effective opportunity would mean a day, when the Court is held and the witnesses of the petitioner-plaintiff are present and statement is recorded.

This will, however, be subject to the condition that the petitioner-plaintiff will pay a costs of Rs.5,000/- to respondents No.1 to 4-defendants.

[ARVIND SINGH SANGWAN]
JUDGE

29.07.2022
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No