

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

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**CR No. 3203 of 2022
Date of decision: 16.08.2022**

Avtar Singh

...Petitioner

Versus

Sunita Rani and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Kamaldip Singh Sidhu, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for setting aside the order dated 16.07.2022, passed by the trial Court, vide which the evidence of the petitioner/defendant was closed noticing the fact that he has availed sufficient opportunities.

Brief facts of the case are that respondents/plaintiffs have filed a suit for specific performance of agreement to sell dated 04.12.2015 qua 09 Kanals and 12 ½ Marlas of land and in alternative, for recovery of Rs. 65 Lakh.

The petitioner/defendant contested the said suit by filing written statement. After the evidence of the respondents/plaintiffs was closed, the case was fixed for defendant's evidence and his partial cross examination was conducted on 04.07.2022 and the case was adjourned for further cross examination and for remaining evidence of the defendant.

Later on, on 16.07.2022, while passing the impugned order, the evidence of the petitioner/defendant was closed. The impugned order reads as under:

“No evidence of defendant is present today. Proxy counsel for the defendant again requested for adjournment stating that DW1 Avtar Singh defendant is not present today for his further cross examination. Perusal of the file reveals that present case was fixed for defendant evidence on 02.07.2021. Thereafter, the defendant has availed approximately 21 effective opportunities including couple of last opportunities but the defendant could not conclude his evidence. On 16.7.2021, 4.8.2021, 21.01.2022, 4.2.2022, 11.2.2022 the regular counsel for the defendant was not available and the on request of proxy counsel the case was adjourned for evidence of the defendant. On 22.4.2022 an application for adjournment of the case filed by the defendant was dismissed subject to payment of costs of Rs.500/-. On 30.5.2022 application for exemption of personal appearance of defendant Avtar Singh was allowed and he was directed to remain present on the next date. Therefore, the defendant has availed ample opportunities to conclude the evidence. Further, it manifests that the defendant is deliberately stalling the proceedings of the present case on one pretext or the other. No plausible ground is made out for granting another opportunity for evidence of defendant on account of his conduct. Moreover the case pertains to five years old category and the same is required to be decided at earliest. **As such the remaining evidence of defendant is hereby closed by order.** Now to come up on 28.07.2022 for rebuttal evidence, if any, otherwise for arguments.”

Learned counsel for the petitioner has relied upon interim

orders passed by the trial Court after the case was fixed for evidence of the petitioner/defendant, a perusal of which reflects that the case was adjourned for a number of times on account of third wave of COVID-19 pandemic.

Learned counsel for the petitioner submits that on 16.07.2022, the marriage of the son of the petitioner/defendant was fixed and on that account, he could not appear before the trial Court.

It is further submitted that the petitioner may be granted one effective opportunity to conclude his entire evidence.

After hearing learned counsel for the petitioner, considering the fact that the suit in question relates to the year 2016 and the nature of decree prayed for is for specific performance of an agreement to sell and in case the petitioner/defendant is not granted the opportunity to conclude his own cross examination by the respondents/plaintiffs as well as to lead his evidence, his case will go undefended, therefore, issuance of notice to respondents/plaintiffs is dispensed with in order to avoid any further delay in disposal of the suit.

Accordingly, the present petition is allowed and the impugned order is set aside.

The trial Court is directed to afford two effective opportunities to the petitioner/defendant to conclude his entire evidence and cross examination by the respondents/plaintiffs. Two effective opportunities would mean the dates, when the Presiding Officer is holding Court and the witness, if any, is to be summoned by the petitioner at his own responsibility.

However, this will be subject to payment of costs of

Rs. 10,000/- to the respondents/plaintiffs.

The respondents/plaintiffs will be at liberty to revive this petition, if so advised.

16.08.2022
Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No