

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

CR-3769-2022 (O&M)

Date of Decision: October 28, 2022

Sudesh Kumar through LRs and others Petitioners
Versus
Manohar Lal Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- None for the petitioners.
Mr. Divanshu Jain, Advocate for the respondent.

HARKESH MANUJA, J.

By way of present revision petition, the petitioners/defendants have impugned the orders dated 22.10.2021 and 21.07.2022 passed by the Court of learned Civil Judge, (Junior Division), Ludhiana, whereby their evidence has been closed by Court order.

The present revision petition arises out of a Civil Suit for possession by way of ejectment along with mandatory injunction as well as permanent injunction filed at the instance of respondent No.1 regarding suit property i.e. plot No.36, measuring 100 sq. yards, situated in Joshi Nagar, Haibowal Kalan, Ludhiana. Issues in the suit were framed on 08.09.2015 and thereafter respondent/ plaintiff concluded his evidence on 20.08.2019 and since then, the proceedings in the suit continued for the purpose of recording of evidence of the petitioners/ defendants.

Vide order dated 22.10.2021, learned Civil Judge (Junior Division), Ludhiana ordered for closure of evidence of the petitioners/ defendants and the suit was adjourned for final arguments. Later, an application was moved by the petitioners/ defendants seeking reviews of

the order dated 22.10.2021 and grant of opportunity to conclude their evidence, however, the same was also dismissed by the Court of learned Civil Judge (Junior Division), Ludhiana, vide subsequent order dated 18.07.2022.

By way of present revision petition, challenge has been made to both the impugned orders dated 22.10.2021 and 18.07.2022.

At the time of issuance of notice of motion on 23.09.2022, this Court passed the following order:-

Present: Mr. Brijesh Nandan, Advocate for the applicants-petitioners.

CM-12348-CII-2022

Present application has been filed for placing on record certified copies of zimini orders passed by Ld. Trial Court from 20.01.2017 till 10.10.2019, as Annexure P-10.

In view of the averments made in the application, same is allowed and requisite document is taken on record.

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Copy of the zimini order dated 29.10.2019 and 19.11.2019, which are also part of the zimini orders filed in the Court today, and the same are taken on record.

Challenge in the present revision petition is to the order dated 22.10.2021 (Annexure P-5) and 18.07.2022 Annexure P-9), which are relating to the closure of the evidence of the petitioner/defendant by order and also dismissal of the application, under Section 151 CPC, filed for review of the order thereby, closing the evidence of the defendant, by order.

Learned counsel for the petitioners submits that wrong observation has been made, about the petitioner/defendant to have availed 21 opportunities, excluding the COVID 19 period and consequently, the order closing the evidence has been wrongly passed. Zimini orders have been placed on record, on the basis whereof, it is submitted that 4 opportunities were availed, prior to the death of Sudesh Kumar, the father of the petitioners and after his death, only 1 opportunity was availed.

Thereafter, the residue opportunities were given, only on the account of prevailing COVID 19 situation

Notice of motion for 27.09.2022.

Double set of summons be issued.

One set be given dasti.

Proceedings before the Lower Court shall remain stayed till the next date of hearing.”

In pursuance thereof, Mr. Divanshu Jain, Advocate, appeared on behalf of the respondent i.e. the sole plaintiff and the matter was adjourned for final arguments.

Today, no one has appeared on behalf of the petitioners.

On the other hand, learned counsel for respondent/ plaintiff vehemently opposed the prayer made in the present revision petition.

I have heard learned counsel for the respondent/ plaintiff, gone through the paper book and find merit in the present revision petition.

As per the record, it appears that the suit has been pending for recording of evidence of the petitioners/ defendants for the past more than 03 years, however, a perusal of the zimni orders shows that a period of almost 2 years have gone by in the pandemic i.e. COVID-19, which in fact appears to be one of the main cause as to why the petitioners/ defendants could not conclude their entire evidence. Thus, it cannot be recorded in the present case that the petitioners were not acting with due diligence, particularly when they have already got recorded statements of their two witnesses.

In view of the limited prayer made on behalf of the petitioners for grant of two effective opportunities so as to conclude their evidence and considering the fact that the purpose of procedural law is always

there to enable the litigants to avail their remedies more effectively; rather than to curtail their rights by adopting hyper-technical approach, discretion needs to be exercised in favour of the petitioners. More than that, in case the petitioners are not granted another opportunity to conclude their evidence, they shall be deprived of their right to adduce their documentary evidence which shall cause serious prejudice to their rights.

Keeping in view the aforesaid facts and circumstances, the present revision petition is allowed. Impugned orders dated 22.10.2021 and 21.07.2022 passed by learned Civil Judge, (Junior Division), Ludhiana, are ordered to be set aside, consequently granting two more effective opportunities to the petitioners/ defendants so as to conclude their entire oral as well as documentary evidence at their own cost and responsibility.

At this stage, learned counsel for respondent No.1/ plaintiff submits that his client is a senior citizen aged 72 years and the suit is pending since 2012 as such he prays for expeditious disposal of the suit.

Keeping in view the aforesaid facts and circumstances, the learned trial Court is requested to expedite the hearing in the suit and to conclude the same within a period of 03 months from the date of receipt of certified copy of this order.

Pending application(s), if any, shall also stand disposed of.

October 28, 2022
sanjay

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No