

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

120

CR No. 4096 of 2022

Date of Decision: 23.09.2022

Balwinder Singh

.....Petitioner

Vs

Sukhwinder Singh and another

....Respondents

CORAM : HON'BLE MS.JUSTICE NIDHI GUPTA

Present: Mr. Saurav Bhatia, Advocate,
for the petitioner.

NIDHI GUPTA, J. (Oral)

By this Civil Revision Petition under Article 227 of the Constitution of India, the petitioner assails the order dated 18.04.2022, passed by the Court of learned Civil Judge (Jr. Divn.), District Shaheed Bhagat Singh Nagar, in CS No. 860 of 2016 whereby the defence evidence has been closed without affording the petitioner an opportunity to lead evidence as DW3. Petitioner further prays for quashing of order dated 12.08.2022 (Annexure P-8), passed by the same Court, vide which the petitioner's application for recalling of order dated 18.04.2022, has been dismissed.

Brief facts of the case are that the petitioner is defendant no.3 in the Civil Suit no. 860 of 2016 filed by the present respondent No.1, seeking permanent injunction.

Learned counsel for the petitioner states that his categorical stand throughout has been that the plaintiff/respondent no.1 has filed the present suit in collusion with defendant No.1, who are both actively conniving against the present petitioner/defendant No.3.

Learned counsel for the petitioner states that the plaintiff/respondent no.1 started his evidence on 27.01.2017 and continued till 30.09.2019, i.e. for a period of 2 years and 9 months and took 29 opportunities to conclude his evidence.

In support, *zimni* orders have been appended as Annexure P-4.

Learned counsel for the petitioner/defendant No.3 fairly admitted that the evidence on behalf of defendants was started on 30.10.2019, thereafter 12 opportunities were granted to lead evidence. However, it is the grievance of the petitioner that he was never given an opportunity by the Court below to lead his evidence and defence evidence was closed vide order dated 18.04.2022, only after affording opportunities to defendant No.1. Learned counsel states that the learned trial Court was in error in closing the evidence of the petitioner as the defence of defendant No.1 was necessary, for the petitioner to lead his evidence.

A perusal of the impugned order dated 12.08.2022, shows that the learned Court below has noted as follows:-

“During these opportunities there was no request or averment by the defendant no.3 to the Court with respect to separate opportunities to be given to defendant no.3 and further it has never been stated that defendant no.1 and 3 have conflicting interest of each other.”

Learned counsel assails the aforesaid finding of the Court below as patently incorrect, and led me to the written statement filed by the petitioner (Annexure P-3), before the Court below in the Civil Suit where it has been categorical stated “that the suit is collusion between plaintiff and defendant No.1”

In paragraph No.1 of the aforesaid written statement it has been stated “the present suit has been filed by the plaintiff in collusion with defendant no.1 only to harass defendants No.2 and 3, as defendant No.2 did not agree to sell or transfer her share to the plaintiff and defendant no.1 for paltry consideration.”

Learned counsel for the petitioner further relies upon two judgments of this Court in **Mohinder Singh vs. Mohinder Kaur and others**, 2017(2) RCR (Civil) 657 and **Baldev Singh vs. Surinder Singh**, 2001 (1) RCR (Civil) 434, where, in similar circumstances, this Court had been pleased to grant relief in order to do substantial justice between the parties.

After hearing learned counsel for the petitioner and on perusal of the material available on file, as well as the factual and legal position noted above, I am of the considered view that without calling the other parties, as that will only prolong the case, the petitioner deserves to be given at least one effective opportunity to lead/conclude his evidence.

In this regard I refer to judgment rendered by the Hon'ble Supreme Court in “**State of Punjab vs. Sham Lal Murari**”, 1976 AIR (SC) 1177, wherein Their Lordships have been pleased to observe that “the Rules of Procedure are handmade of justice and the Courts should not deny the justice to the deserving litigants, as that would lead to the miscarriage of justice - The Procedural Law is not be tyrant but a servant, not an obstruction, but an aid to the justice delivery system. A liberal approach is required to be taken in such matters.”

In view of the aforesaid position and the judgments referred to hereinabove, the present petition is allowed and the impugned orders dated 18.04.2022 and 12.08.2022, are set aside.

The trial Court is directed to grant one effective opportunity to the petitioner to produce his entire evidence. It shall be the responsibility of the petitioner/defendant No.3 to produce his evidence on the date so fixed by the trial Court. However, the petitioner is burdened with costs of Rs.10,000/- to be paid to the opposite party.

Disposed of accordingly.

September 23, 2022
dharamvir

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned : YES/NO
Whether Reportable : YES/NO