

115 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-4861-2022
Decided on:-31.10.2022

Karamjeet Singh

....Petitioner

vs.

Harmandeep Dhillon and another

....Respondents.

CORAM:HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Ishan Gupta, Advocate,
for the petitioner.

HARKESH MANUJA J. (Oral)

By way of present revision petition challenge has been made to an order dated 02.08.2022 (Annexure P-6) passed by the court of learned Additional Civil Judge (Senior Division), Sangrur, whereby, the evidence of the petitioner/defendant No.1 has been closed by court orders.

The facts leading to the present case are that respondent No.1-plaintiff filed a suit for declaration claiming himself to be owner being co-sharer to the extent of 1/3rd share in the land detailed in the plaint with a further challenge to the mutation No.5034 dated 29.03.2017 sanctioned and entered in the name of the petitioner/defendant No.1 based on the registered Will dated 19.03.2015.

Issues in the present case were framed on 13.05.2019. Thereafter, the evidence of respondent- No.1-plaintiff was concluded on 21.11.2019 and the matter was fixed for recording of the evidence of petitioner-defendants. Vide impugned order dated 02.08.2022, the evidence of the petitioner-defendant No.1 has been closed by the court orders on the

ground that he has been granted sufficient opportunities and despite that he has not been able to conclude his evidence. It is the said order, which has been impugned in the present revision petition.

Learned counsel for the petitioner-defendant No.1 has produced before this Court zimni orders passed by the learned trial court, since the day, his evidence was started till the passing of the impugned order and submits that on the first three dates i.e. 04.03.2020, 04.05.2020 and 04.08.2020, the learned Presiding Officer was on leave and as such, his evidence could not be recorded. He submits that, thereafter, on account of widespread Covid-19 pandemic situation, the proceedings in the suit were adjourned without there being any effective hearing for long.

Learned counsel for the petitioner also submits that during the said period, the petitioner even got examined three witnesses but somehow, on account of inadvertent error, he could not get himself examined. He submits that in case one effective opportunity is granted to the petitioner, he will conclude his entire evidence on the date fixed before the trial court i.e. on 24.11.2022 itself.

I have heard learned counsel for the petitioner and gone through the paper book as well as zimni orders.

Though, it appears that the petitioner was granted reasonable opportunity by the learned trial court so as to conclude his entire evidence but however, considering the fact that in the past two years, there were intermittent breaks in the hearings before the courts, which also contributed towards some delay at the hands of litigants on account of communication gap with their respective counsels. Even otherwise, in the present case, the petitioner-defendant No.1 has already examined three witnesses and only

requires himself to appear in witness-box in support of his stand in the written statement.

Since, substantial right of the parties are involved, the non-examination of the petitioner-defendant No/1 may be taken against him as an adverse inference and as such, rather than adopting hypertechnical approach and in order to further the cause of justice as well as, considering the facts and circumstances, I deem it appropriate to grant one last effective opportunity to the petitioner, enabling him to conclude his entire evidence on the date fixed i.e. 24.11.2022 before the trial court. Resultantly, the impugned order dated 06.08.2022 is hereby set aside and the revision petition is allowed, subject to payment of costs of Rs.10,000/- to be paid to the respondents-plaintiffs. The payment of costs shall be a condition precedent.

Keeping in view the nature of proceedings, the present petition is being disposed off without issuing notice to the respondents-plaintiffs, in order to avoid unnecessary delay in the proceedings before the trial court. However, in case, the respondents find any misrepresentation of facts at the instance of the petitioner, they shall be at liberty to move an appropriate application in this regard.

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

(HARKESH MANUJA)
JUDGE

31.10.2022
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/ No