

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

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CR No.442 of 2023 (O&M)
DATE OF DECISION : 07th FEBRUARY, 2023

Ravinder Singh Bains

.... Petitioner

Versus

Jagjit Singh Bains

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Ms. Ekta Sharma, Advocate
for the petitioner.

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RAJBIR SEHRAWAT, J. (Oral)

This is a revision petition filed under Article 227 of the Constitution of India praying for setting aside the order dated 23.11.2022 (Annexure P-1) passed by Civil Judge (Junior Division), Chandigarh, vide which the evidence of the petitioner/defendant has been closed by order.

It is submitted by the counsel for the petitioner that in a suit for partition between the parties, the plaintiff was granted, as many as, about ten opportunities. On the other hand, when the evidence of the present petitioner started, the petitioner made every effort to conclude the evidence. However, the petitioner/defendant has been granted only two effective opportunities to lead the evidence. Even during these two effective opportunities, the petitioner could not conclude his evidence because the petitioner, being of the age of 74 years, could not appear before the Court to depose in his case. The default on the part of the

petitioner was not intentional. It is further submitted that the petitioner is a contesting defendant in the suit and if the petitioner is not granted opportunity to lead the evidence and to defend the suit, then the case of the petitioner would be prejudiced beyond redemption. Hence, the petitioner deserves to be granted, at least, one opportunity to appear as a witness and to examine any other witness, which is necessary for contesting the suit.

In view of the nature of order being passed, this Court does not deem it appropriate to issue notice to the other side, at this stage.

Having heard the counsel for the petitioner and having perused the case file, this Court finds that the trial Court had granted as many as five opportunities to the petitioner; to lead the evidence in defence. Out of these, although the case has to be adjourned for some other factors on some dates, however, the petitioner got at least two effective opportunities to lead his evidence. However, he did not avail those two opportunities to lead the evidence in his support. Therefore, this Court does not find any, *ex facie*, illegality or perversity with the order passed by the trial Court.

However, the law of procedure is handmade to advance the interest of the substantial justice. The petitioner, being a contesting defendant, would suffer a damage and prejudice to the suit which cannot be redeemed subsequently, if he is not granted opportunity to lead the evidence which he wishes to lead; so as to prove his case. Therefore, it would not be inappropriate to grant opportunity to the petitioner to lead the evidence, however, by putting him under an appropriate financial burden.

Accordingly, the order passed by the trial Court is set aside. The trial Court is directed to grant appropriate opportunity to the petitioner to lead his evidence, however, subject to payment of ₹15,000/- as costs, to be deposited with the Poor Patient Welfare Fund, PGI, Chandigarh, within a period of 15 days from today.

It is clarified that the petitioner would be permitted to lead the evidence only on production of the receipt before the trial Court qua having deposit the costs; as ordered above.

Disposed of in the above terms.

07th FEBRUARY, 2023
‘sandeep’

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>