

CM-9598-CII-2023 IN/AND
CR-1867-2017 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-9598-CII-2023 IN/AND
CR-1867-2017 (O&M)
Date of decision: June 01, 2023

Major Singh

....Petitioner

versus

Gram Panchayat and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Rajinder Kumar Singla, Advocate for applicant-petitioner.

None for non-applicant-respondents.

ARUN MONGA, J. (ORAL)

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This is an application for recalling of order dated 16.05.2023 whereby main revision was dismissed in default.

Despite advance service of application, none appears on behalf of non-applicant-respondents No.1 and 2, which is seemingly suggestive that there is no serious opposition if the revision petition, which was dismissed in default, is restored to its original number.

In view of the above and for the reasons stated in application, same is allowed. Main revision is restored to its original number and the same is taken on Board for hearing today itself. Registry to do the needful.

Main case (O&M)

Present revision petition *inter alia* is for setting aside/ quashing impugned order 19.10.2016 (Annexure P-3) passed by learned Civil Judge (Senior Division), Bathinda whereby evidence of the petitioner-plaintiff was closed by order; and order dated 16.12.2016 (Annexure P-6), whereby application filed by petitioner-plaintiff for recalling of aforesaid order dated 19.10.2016 (Annexure P-3), was also dismissed.

2. Averments are that petitioner-plaintiff filed civil suit for permanent injunction against respondent-defendants *inter alia* restraining them from interfering in the peaceful possession of residential house of plaintiff, and also restraining them not to carve out any street through residential house of plaintiff which is situated within red line of Village Jeeda.

2.1. Vide impugned order dated 19.10.2016 (Annexure P-3), evidence of plaintiff was closed by order by learned trial Court on the ground that plaintiff has already availed more than 20 opportunities but failed to conclude evidence.

2.2. Aggrieved, plaintiff filed an application for recalling of aforesaid order, which was also dismissed vide order dated 16.12.2016 (Annexure P-6) on the ground that plaintiff intentionally and willfully did not appear to face his cross-examination.

3. Learned counsel for petitioner-plaintiff contends that due to unavoidable circumstances, petitioner could not appear before learned trial Court. He further submits that cross-examination of petitioner is very much essential and material for the purpose of deciding suit effectively.

4. I have heard learned counsel for petitioner and perused the case file.

5. Perusal of case file shows that plaintiff appeared in the witness box as PW-5 and tendered his affidavit on 07.04.2016. His cross-examination was deferred on request of learned counsel for defendant. Further, on 11.05.2016, plaintiff was bound down on the request of learned counsel for defendant, but thereafter, he did not appear to face cross-examination. Plaintiff had also examined PW-6 Narinder Kumar Singla on 19.09.2016, but he himself did not appear for his cross-examination. It transpires that no doubt, there has been delay on the part of petitioner/plaintiff to appear and face cross-examination, but said delay, as is borne out from the aforesaid, is not entirely attributable to plaintiff.

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6. I am of the view that delay in trial seems to have weighed in the mind of learned Court below. The delay in trial is rather detrimental to plaintiff himself as it is his claim which will get delayed in case he is allowed to adduce evidence at this stage.
7. Trite law it is that procedure is the handmaid of justice and, ought not be given precedence at the cost of subjugation of substantive justice. The procedural provisions cannot be allowed to thwart real and substantial justice between the parties. The valuable right of litigants to establish their cases by adducing evidence ought not to be taken away by the Court except in a case of their deliberate omission/failure to produce evidence more so if the other side can be compensated by costs. Prejudice would indeed be caused to petitioner herein, unless afforded an opportunity to get himself cross-examined. Trial in injunction suit may lead to unjust consequences in the absence of further opportunity to petitioner to get himself cross-examined.
8. In the peculiar premise, impugned order(s) is/are set aside. Learned trial Court shall grant one effective opportunity to petitioner/ plaintiff for his remaining evidence, subject to payment of costs of Rs.5,000/- to be paid to respondents No.1 and 2-defendants. However, it is made clear that learned trial Court shall be at liberty to grant further opportunity depending upon its work exigencies.
9. Disposed of, accordingly.
10. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

June 01, 2023

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No