

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

CR-1355-2023 (O&M)

Date of Decision: 01.03.2023

Balwinder Singh

....Petitioner

Versus

Navjeet Pal Kaur and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. R.S. Randhawa, Advocate
for petitioner.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside order dated 07.05.2022 (Annexure P-1) passed by Ld. Civil Judge (Jr. Divn.), Ludhiana whereby evidence of petitioner/defendant No.1 was closed in a suit for declaration and permanent injunction filed by respondents No.1 and 2 herein.

2. Given the nature of order being passed, there is no necessity to issue notice to respondents, as no serious prejudice would be caused to them. Notice to respondents is thus dispensed with.

3. Learned counsel contends that as many as 31 opportunities were granted to plaintiffs for conclusion of their evidence. He submits that no doubt petitioner/defendant No.1 had already availed 32 opportunities but due to circumstances beyond his control, cross-examination of DW1 & DW3 could not be carried out since Ld. Trial Court deferred the same not only on the request of learned counsel for petitioner/defendant No.1 but at the request

of learned counsel for plaintiffs/respondents No.1 & 2. He draws my attention to the zimni orders appended with petition as Annexure P-4 (Colly.) in support of his contention that delay, if at all, in carrying out the process is attributable to learned counsel for plaintiffs and not solely to learned counsel for defendant No.1. He further submits that at about 7-8 occasions, when the matter was fixed for cross-examination of DW1 & DW3, since none of them were present in the Court, therefore, the proceedings had to be deferred awaiting their personal presence to undergo the cross-examination.

4. Having seen the record appended with revision petition, I am of the view that in the totality of circumstances, no serious prejudice would be caused to the plaintiffs if defendant No.1 is given one effective opportunity to get the cross-examination of DW1 & DW3 conducted, who have already tendered their affidavits in examination-in-chief and in absence of their cross-examination, the same would naturally be discarded. Further, it appears that Ld. Trial Court on one hand was swayed with the fact that trial was being delayed owing to non-conducting of cross-examination of DW1 & DW3 despite various opportunities but at the same time respondents No.1 & 2/plaintiffs moved an application under Order 6 Rule 17 CPC to seek amendment of plaint, and at fag end of trial, which was allowed. Naturally, the amendment at that stage would have resulted in certain delays in the trial and therefore, defendant No.1 should not suffer on account of delay, which is likely to be caused by granting one effective opportunity.

5. Keeping in view the facts and circumstances of the case, I deem it appropriate to grant one effective opportunity to petitioner to adduce

evidence and get cross-examination of DW1 & DW3 conducted, subject of course to the discretion of Ld. Trial Court to grant further opportunity depending upon the exigency of work. However, the aforesaid opportunity would be subject to costs of Rs.20,000/- to be paid to plaintiffs, which shall be a condition precedent. If the costs are not paid, as directed, the impugned order shall stand restored.

6. Petition stands allowed and impugned order dated 07.05.2022 is set aside in the above terms.

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

(ARUN MONGA)
JUDGE

March 01, 2023
ashish

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