

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

CR-1558-2023
Date of Decision: 15.03.2023

Jagdish Singh

..... Petitioner

Versus

Amarjit Singh Gandhi and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Monty Goyal, Advocate,
 for the petitioner.

RAJBIR SEHRAWAT, J. (ORAL)

This is a petition filed under Article 227 of the Constitution of India for setting aside the order dated 28.02.2023 (Annexure P-3) passed by the Additional Civil Judge (Senior Division), Ludhiana, whereby the evidence of the defendant/petitioner has been closed by order of the Court.

It is submitted by the learned counsel for the petitioner that the Trial Court has wrongly closed the evidence of the petitioner by order on account of non-examination of the defence witnesses. It is further submitted that the petitioner had engaged the counsel to contest the suit. However, after completion of the evidence of the plaintiff, the counsel never informed the petitioner qua the requirement of examining witnesses on behalf of the petitioner as defendant. As a result, five opportunities were wasted without any fault on the part of the petitioner. However, the Trial Court has closed the evidence vide order dated 09.03.2023. Only after the said order was passed, the petitioner came to know that the witnesses were still required to

be examined on behalf of the petitioner and his evidence has been closed by the Trial Court. Thereafter, the petitioner had to change his counsel as well. The petitioner is the contesting defendant in the suit now, therefore, case of the petitioner would be seriously prejudiced, if he is not granted opportunity to lead the evidence. Hence, the petitioner deserves to be granted opportunity to lead the evidence.

In view of the nature of the order being passed in this case, there is no requirement of notice to the respondents at this stage.

Having heard learned counsel for the petitioner and having perused the case file, this Court finds that the Trial Court has granted five effective opportunities before passing of the order of closure of evidence of the petitioner. Even the costs, which was imposed upon the petitioner; as defaulting defendant in the suit; has not been paid by him. Therefore, there does not appear to be any *ex facie* illegality or impropriety in the order passed by the Trial, as such.

However, the law of procedure is handmade to advance the interest of the substantial justice. Therefore, the emphasis of the law has to be to hear-out the parties instead of excluding them from hearing. Moreover, the petitioner is a defendant in the suit and his case would be adversely effected beyond redemption, if he is not granted an opportunity to lead the evidence. Therefore, it would not be inappropriate, if the petitioner is granted opportunity to lead the evidence, however, by putting him under an appropriate financial burden; so as to make him realize his mistake of wasting time of the Court.

In view of the above, the present petition is allowed and the impugned order passed by the Trial Court is set aside. The Trial Court is directed to grant two effective opportunities to the petitioner to lead evidence in support of his defence and to contest the suit accordingly, however, subject to payment of Rs.10,000/- as costs by the petitioner, to be deposited with the Poor Patients' Welfare Fund, PGIMER, Chandigarh, within a period of 15 days from today.

However, it is clarified that the Trial Court shall grant the aforesaid opportunities to the petitioner only on his producing the receipt of having deposited the costs, as ordered above.

(RAJBIR SEHRAWAT)
JUDGE

15.03.2023
adhikari

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No