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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No. 1695 of 2023 (O&M)
Date of Decision:21.07.2023

Harpreet Singh & Anr.

... Petitioners

Versus

Vijay Kumar alias Sonu and Others.

... Respondents

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Present:- Mr.G.S. Jagpal Advocate
for the petitioners.

Mr. Parampreet Singh Paul, Advocate for respondent No.1

Mr. Vishal Gaur, Advocate for respondent No.2

Mr. Ankit Kaushal, Advocate for respondent No.3.

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SANJIV BERRY, J.

CM-7742-CII of 2023

For the reasons mentioned in the application, which is duly supported by an affidavit, the same is allowed and the documents mentioned therein are taken on record as Annexure R-1/1 and Annexure R-1/2.

CM stands disposed of.

CR No. 1695 of 2023

2. Present revision petition has been preferred under Article 227 of the Constitution of India, by the petitioners (defendant No.1 and 2) in the civil suit titled Vijay Kumar @ Sonu Vs. Harpreet Singh and Others, against

the impugned order dated 08.02.2023 (Annexure P-18), passed by Ld. Civil Judge (Jr. Div.), Mohali, whereby, the evidence of the petitioners-defendants No.1 and 2 had been closed by order.

3. Vide order dated 23.03.2023, the notice of motion was issued. The respondent No.1 to 3 appeared through their respective counsels.

4. It has been contended by learned counsel for the petitioners that vide the impugned order the learned trial Court has closed the evidence of the petitioners defendant No.1 and 2 by order. He submitted that the perusal of previous zimni orders in the case would reveal that on many a dates the DW Paramjeet Kaur has been present but her cross-examination could not be recorded for one reason or the other and the case had been adjourned to next date but unfortunately on 08.02.2023 she could not appear due to some unavoidable circumstances and the learned trial Court proceeded to close the evidence of the defendants by order. He submitted that the petitioner would suffer irreparable loss and injury in case the petitioner are not allowed to adduced their evidence on merits of the case and further undertakes that if granted opportunity by this Court, the petitioners would close the evidence at own responsibility within the time frame fixed by this Court. He further submitted that the next date in the suit before the trial Court is 02.08.2023.

5. The learned counsel for the contesting respondent No.1 has submitted that although the impugned order has been passed in accordance with law as ample opportunity had been afforded to the petitioner to conclude the evidence. However, learned counsel for contesting respondent No.1 plaintiff has very fairly submitted that in order to facilitate the learned trial Court to arrive at just conclusion on the basis of the merits of the case

rather than proceeding on technicalities, he has no objection if opportunity to lead evidence is afforded to petitioners-defendants.

6. The learned counsels for respondents No.2 and 3 have also been heard.

7. After hearing the respective submissions and perusing the record it transpires that the plaintiff respondent No.1 had filed the suit for recovery against the present petitioners and also the respondent No.2 to 5. After the defendants put in appearance, and completion of the pleadings the plaintiff adduced the evidence in the trial Court and thereafter, the defendants were asked to adduce the evidence. During the course of proceedings as the defendant-petitioner could not conclude the evidence despite taking many opportunities the evidence of the present petitioners was closed by order in terms of order (Annexure P-18) dated 08.02.2023 which is being impugned. The perusal of the zimni orders would reveal that DW Paramjeet Kaur had appeared in the trial Court on many dates, although her examination in chief was recorded, but her cross examination had to be deferred by the Court on one pretext or the other. On the date fixed i.e. 08.02.2023 she could not appear in Court, as per learned counsel for the petitioners due to some unavoidable circumstances and the learned trial Court proceeded to close the evidence by order on that day.

8. Since, during course of hearing of the petition the learned counsel for the petitioner has undertaken that if granted opportunity the petitioners would adduce evidence within the stipulated time frame fixed by this Court and the learned counsel for contesting respondent No.1 has also very fairly pleaded no objection if some opportunity is granted to the

petitioners for this purpose, it is considered appropriate and in the interest of justice by this Court that instead of proceeding on mere technicalities by the learned trial Court, the *lis* should be decided on the merits of the case and in the given circumstances, if afforded opportunity to conclude the evidence to the petitioner, no prejudice would be caused to the plaintiff respondent No.1 who could well be compensated by payment of costs.

9. Thus, keeping in view the facts and circumstances mentioned above coupled with the submission of the learned counsel for respondent No.1, the impugned order dated 08.02.2023 (Annexure P-18) is hereby set aside and the learned trial Court is directed to afford the petitioners-defendants with two effective opportunities to conclude the evidence at own responsibility subject to payment of ₹10,000/- as costs to be paid by the petitioners to the plaintiff- respondent No.1 in the trial Court on the next dated fixed i.e. 02.08.2023. It is clarified that the petitioners would appear in the trial Court on 02.08.2023 and pay the aforesaid costs and thereafter, the trial Court would grant two effective opportunities to the petitioners to conclude the evidence at own responsibilities. Needless to say that no further opportunities for this purpose shall be afforded.

10 Anything stated herein above shall not treated as any expression of opinion on merits of the case.

11. Petition stands disposed of accordingly.

(SANJIV BERRY)
JUDGE

21.07.2023

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i)	Whether speaking/reasoned?	Yes/No
ii)	Whether reportable?	Yes/No