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

CR-2303-2023 (O&M)

Date of Decision: 19.04.2023

Varun Bhutani

....Petitioner

Versus

Laxman

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. JagtarKureel, Advocate
for the petitioner.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside order dated 09.03.2023 (Annexure P-9) passed by Ld. Additional Civil Judge (Sr. Division), Palwal, whereby evidence of petitioner/defendant, was closed.

2. Succinct facts first, as pleaded in the revision.

2.1. Respondent/plaintiff has filed a suit (Annexure P-2) for possession by way of specific performance as well as suit for permanent injunction. It was stated therein that respondent/plaintiff has entered into an agreement to sell with petitioner/defendant with regard to sale of shop measuring 10x20 feet to the extent of ½ share i.e. 11 square yards. It had been alleged by plaintiff that an agreement to sell was executed between plaintiff and defendant on 31.03.2015 and defendant had received a sum of Rs.7 lakh from plaintiff in cash as earnest money. As per averments made in plaint, the last date of execution and registration of sale deed was settled as 28.02.2016 and balance sale consideration was to be paid on the date

of execution/registration of sale deed. On these averments, suit for specific performance was filed along with relief of permanent injunction.

2.2. Upon notice, petitioner/defendant appeared before Ld. Trial Court and submitted his written statement (Annexure P-3) denying all claims as made by plaintiff. It has been specifically pleaded that no such agreement was ever executed between plaintiff and defendant. Petitioner had also pleaded that the shop in question is his only source of earning and no question arises of selling out this shop. Further it was pleaded that petitioner/defendant is only a co-owner of this shop and partition has not taken place. Therefore, entering into an agreement to sell to the extent of 50% share is next to impossible. It has been further pleaded that actual size of shop is not 10x20 feet rather it is much more than the size given by plaintiff which proves that agreement to sell as alleged by plaintiff is forged and fabricated.

2.3. Ld. Trial Court on completion of pleadings framed issues vide order dated 14.08.2018 (Annexure P-4) and case was fixed for evidence of plaintiff. Plaintiff in the present case has availed more than 20 opportunities to lead evidence and has examined 7 witnesses and thereafter he closed his evidence vide order dated 17.11.2022 (Annexure P-5). Ld. Trial Court had granted various long adjournments to plaintiff to lead his evidence. Defendant also moved an application under Order 7 Rule 11 CPC which was dismissed by Ld. Trial Court. However, when recording defendant's evidence was still in progress, Ld. Trial Court observed that the petitioner had failed to conclude his evidence despite several opportunities and closed his evidence vide impugned order in most illegal and arbitrary manner.

3. Learned counsel for petitioner would argue that Ld. Trial Court gravely erred in not considering that proper and appropriate opportunities have not been provided to petitioner to lead his evidence.

4. Given the nature of order being passed, there is no necessity to issue notice to respondent, as no serious prejudice would be caused to him. Notice to respondent is thus dispensed with.
5. I have heard learned counsel for petitioner and perused the case file.
6. I am inclined to accept the revision petition since it is a categoric case of unfair treatment meted out to petitioner/defendant when weighed on the scale of parity, as is borne out from the record. Plaintiff has been granted 20 opportunities to conclude his evidence starting from 03.10.2018 to 17.11.2022 as against the defendant who has been given only five effective opportunities in a short span of 4-5 months and that too by granting adjournments of 7-10 days.
7. In view of the aforesaid scenario, revision stands allowed. Impugned order is set aside. Ld. Trial Court to give two effective opportunities to petitioner and second opportunity shall be given after a gap of four weeks of the first one. Needless to say that the Ld. Trial Court has its own discretion to grant further opportunities depending upon exigency of work before it.
8. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

April 19, 2023
ashish

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