

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-3242-2023

Date of Decision : 12.07.2023

Bachhittar Singh

..... Petitioner

Versus

Jaswant Singh @ Mohinder Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Mr. Saransh Sabharwal, Advocate
for the petitioner.

Mr. Jaideep Verma, Advocate
for the respondent.

VIKRAM AGGARWAL, J (ORAL)

The present petition filed under Article 227 of the Constitution of India assails the order dated 01.05.2023, passed by the Civil Judge (Senior Division), Rupnagar, vide which the evidence of the petitioner-defendant was closed by order.

A suit for possession of property measuring 16 kanals (fully described in the plaint), situated in Village Nangal Sarsa, Tehsil & District Rupnagar was filed by the respondent-plaintiff Jaswant Singh @ Mohinder Singh against the present petitioner-defendant Bachhittar Singh. Further prayer for recovery of amount of ₹4,50,000/- was also made. When the suit was fixed for the evidence of the defendant and the defendant had availed sufficient opportunities, the trial Court, vide order dated 01.05.2023, observed that the petitioner-defendant had

availed. The evidence of the petitioner-defendant was thereby closed and the case was fixed for final arguments.

Learned counsel for the petitioner submits that the evidence of the plaintiff commenced on 19.07.2018 and concluded on 04.10.2022. It has been submitted that the first date for evidence of the defendant was 13.10.2022 and the same was closed on 01.05.2023. Learned counsel has referred to the interlocutory orders annexed as Annexure P-3 and has submitted that no doubt the petitioner-defendant availed sufficient opportunities but the matter was not always adjourned on his request. Learned counsel submits that one effective opportunity be granted to the petitioner to lead and conclude his evidence. It has further been submitted that only one more witness has to be examined by the petitioner-defendant and only one effective opportunity would be required for the same.

On the other hand, learned counsel representing the respondent has opposed the prayer made by learned counsel for the petitioner, submitting that sufficient opportunities were granted to the petitioner-defendant for leading and concluding his evidence.

I have considered the submissions made by learned counsel for the parties. No doubt, sufficient opportunities were granted to the petitioner-defendant to lead and conclude his evidence. However, a perusal of the interlocutory orders which have been annexed as Annexure P-3 shows that the case was not always adjourned on account of non-availability of witnesses of the defendant. On certain occasions, it was adjourned as the Presiding Officer was on leave and on two occasions, it was adjourned on the request of the learned counsel for the respondent-plaintiff despite the fact that DW1 was present for cross-examination. It is also to be noticed that more than four years were taken by the plaintiff to conclude his evidence. Though, the claim of the petitioner for grant of

a further opportunity is not justified, it is always in the interest of justice that

matters are decided on merits and not on technicalities. Since the petitioner-defendant seeks to examine only one more witness and wants only one effective opportunity for the same to produce the witness and the documents, if any, I deem it appropriate to grant the same to the petitioner.

In view of the above, the present petition is allowed. The order dated 01.05.2023, passed by the Civil Judge (Senior Division), Rupnagar is set aside. One effective opportunity shall be granted to the petitioner-defendant to examine one witness and produce documents, if any, in evidence. This shall, however, be subject to payment of Rs.10,000/- as costs to be paid to the respondent-plaintiff.

(VIKRAM AGGARWAL)
JUDGE

12.07.2023
mamta

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