

Sr. No. 236

2023:PHHC:079133

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

CR-5072-2019 (O&M)

Date of decision: 30.05.2023

Ravinder Singh

...Petitioner

Vs.

Smt. Raj Rani

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Hemender Goswami, Advocate,
For the petitioner.

ARUN MONGA, J. (ORAL)

Present revision petition is to set aside the impugned order dated 26.07.2019 (Annexure P-1) passed by learned Civil Judge (Junior Division), Ludhiana whereby evidence of the plaintiff/petitioner was closed by order.

2. Succinct facts first, as pleaded in the instant petition.

2.1. Plaintiff-petitioner filed a suit for possession by way of specific performance of agreement to sell dated 10.02.2014 executed by defendant-respondent in his favour with regard to the suit property i.e., one double storeyed house measuring 130 sq. yards in village Gill as well as for Mandatory injunction directing her to execute the sale deed in his favour on receipt of balance sale consideration or in alternative suit of recovery of Rs.5,20,000/- along with interest @9% p.a. and for permanent injunction restraining defendant from alienating in any manner the said property.

2.2. Defendant entered into an agreement to sell with plaintiff-petitioner on 10.02.2014 for total sale consideration of Rs.12 Lakh and she also received earnest money of Rs.5,20,000/- from plaintiff and handed over symbolic possession to him. It was agreed that before the execution of the sale

deed, defendant will complete all the documents regarding title in her favour and latest copy of Jamabandi and the sale deed will be executed latest by 10.05.2014.

3. Learned counsel for petitioner would argue that the impugned order has resulted into grave miscarriage of justice and for effective adjudication of the case, petitioner may be permitted to get himself cross-examined and to produce only one witness in the interest of justice and equity.

4. As per office report, notice could not be issued to respondent due to non-filing of correct address. However, requirement of issuing fresh notice to respondent at this stage, is dispensed with, given the nature of order being passed, as no prejudice would be caused to respondent.

5. I have heard learned counsel for petitioner and perused the case file.

6. The controversy herein being narrow and already has since been summed up in notice of motion order dated 26.08.2019 passed by a coordinate Bench of this Court presided over by Sudip Ahluwalia, J. (as he then was in this Court), is being reproduced hereinbelow:

“Submits inter alia that the Petitioner/Plaintiff was actually in pain after having suffered injury, for which he even got himself Radiologically examined, as can be seen from copy of the Medical Certificate (Annexure P-2).

Submits further that the petitioner shall positively tender himself for cross-examination and shall also have the entire evidence from his side to be completed on one or at the most two effective dates, in case, the trial Court itself is not in a position to complete the same on a single date and would also be willing to pay appropriate costs to the Respondent/Defendant.

Notice of motion for 23rd October, 2019.

Ld. Trial Court is directed to adjourn its proceedings beyond the date fixed before this Court.”

7. Trite law it is that procedure is a handmaid of justice and, ought not to be given precedence at the cost of subjugation of substantive justice. The valuable right of litigants to establish their cases by leading evidence ought not

to be taken away by the Court except in a case of their deliberate omission/failure to adduce the same earlier. Prejudice would indeed be caused to petitioner herein, unless afforded an opportunity to lead evidence which in fact seems necessary for a just decision of the case. Trial in the matter may lead to unjust consequences in the absence of an opportunity to petitioner-plaintiff to adduce/conclude evidence.

8. For the foregoing reasons, I deem it appropriate to grant two effective opportunities to petitioner to conclude evidence. Petitioner to remain bound by the undertaking given at the time of issuance of notice of motion order. Accordingly, learned trial Court is requested to give two effective opportunities to petitioner for concluding evidence. To that extent, the impugned order is modified and the revision petition is allowed dispensing with notice to the respondent, subject to payment of costs of Rs.5,000/- to be paid to respondent/defendant.

9. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

30.05.2023
vandana

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