

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-5541-2019

Date of decision: 18.04.2023

MANJEET SINGH

...Petitioner

VS

JAMNA DEVI AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: None for the petitioner.

Mr. Himanshu Chhabra, Advocate for
Mr. Jaideep Verma, Advocate,
For the respondents.

ARUN MONGA, J. (ORAL)

Present revision petition is to set aside impugned order dated 26.07.2019 (Annexure P-6) and order dated 29.08.2019 (Annexure P-9) passed by Learned Civil Judge (Senior Division), Rupnagar whereby evidence of petitioner/plaintiff was closed by Court order and thereafter application for recalling the said order, was also dismissed.

2. There is no representation on behalf of petitioner. Perused.

3. It is stated in the petition that petitioner/plaintiff filed a suit for specific performance with consequential relief of permanent injunction on the basis of agreement to sell dated 16.03.2012 vide which respondents who are owners/GPA had agreed to sell their land/house in question and they received whole consideration of 35 lakh rupees from petitioner and handed over possession to plaintiff/petitioner. Defendants appeared and filed written statement.

3.1. As per averments made in the petition, petitioner/plaintiff filed his replication. Issues were framed on 04.08.2017. Plaintiff appeared a

number of times in learned trial Court for cross-examination but to no avail. He wanted to examine one official witness i.e., Kanungo. He filed an application and deposited diet money to summon the said witness. It is further stated in the petition that plaintiff/petitioner remained present on a number of occasions for the purpose of recording of his evidence but to his dismay, matter was adjourned even without marking his presence.

3.2. Thereafter, vide impugned order dated 26.07.2019 (Annexure P-6) evidence of plaintiff was closed by order by observing that plaintiff has availed sufficient number of opportunities for concluding his evidence but he has failed to conclude its evidence. Thereafter, application moved by petitioner/plaintiff to recall order dated 26.07.2019 was also dismissed vide order dated 29.08.2019 (Annexure P-9), impugned herein.

3.3. It is further stated in the instant petition that the impugned orders have resulted into grave miscarriage of justice and for effective adjudication of the case, petitioner/plaintiff ought to be permitted to adduce evidence of official witness, in the interest of justice and equity.

4. Per contra, learned counsel for respondents strenuously opposes the instant petition.

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

6. Trite law it is that procedure is a handmaid of justice and, ought not to be given precedence by subjugation of substantive justice. The valuable right of litigants to establish their cases by adducing evidence ought not to be taken away by the Court except in a case of their deliberate omission/failure to adduce evidence, particularly when the other side can be compensated by costs. Prejudice would indeed be caused to petitioner

herein, unless afforded an opportunity to adduce evidence. Trial in the suit may lead to unjust consequences in the absence of an opportunity to petitioner-plaintiff to adduce evidence.

7. It is stated in the revision petition and in the aforesaid peculiar circumstances, it appears that learned Trial Court rather got over-swayed with the fact that grant of further opportunity to adduce evidence would delay the trial. No doubt, trial would get delayed but the same is also detrimental to petitioner-plaintiff. Given that defendant was given ample latitude for conducting cross-examination, it would be fair and in the interest of justice that one opportunity is granted to plaintiff to produce his evidence subject to payment of costs of Rs.5,000/-and further subject of-course to discretion of learned trial Court to grant further opportunity, in case it so desires depending upon exigencies of work before it. Costs shall be paid to defendants, which shall be a condition precedent. If the costs are not paid, as directed, the impugned order shall stand restored. To that extent, the impugned order is modified and the revision petition is allowed.

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

(ARUN MONGA)
JUDGE

18.04.2023
vandana

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