

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(105-A)

CM-5401-CII-2023 in/and
CR-5989-2019

Date of Decision : May 15, 2023

Ramesh Bansal

.. Petitioner

Versus

Harjinder Singh Tuli

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Swarn Tiwana, Advocate, for the applicant-petitioner.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-5401-CII-2023

Present application has been filed for recalling the order dated 24.02.2023, by which, the present civil revision petition was dismissed for non-prosecution.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the same is allowed. The order dated 24.02.2023 is recalled and the civil revision petition is restored to its original number and status.

CR-5989-2019

1. Present civil revision petition has been filed for setting aside the order dated 09.09.2019 (Annexure P-6) by which, the evidence of petitioner-defendant has been closed.

2. Learned counsel for the petitioner submits that in the present case, the defence evidence was closed vide impugned order dated 09.09.2019 (Annexure P-6). Learned counsel for the petitioner further submits that though it has already come on record that number of opportunities were given but keeping in view the settled principle of law that the dispute between the parties be decided on merits as far as possible, one more opportunity be given to the petitioner-defendant to conclude his all evidence even if, the said opportunity is to be extended by imposing cost.

3. It may be noticed that it has already come on record that seven opportunities were granted to the petitioner-defendant to lead the defence evidence. On 26.08.2019, final opportunity was granted to lead the defence evidence on 09.09.2019 subject to payment of Rs.500/- as cost to the opposite party and Rs.500/- cost to the DLSA. Despite the said condition, the petitioner-defendant did not produce his evidence and the Court vide impugned order dated 09.09.2019 (Annexure P-6) closed the defence evidence by an order. In these circumstances, it cannot be said that the due opportunities to defend were not given to the petitioner-defendant.

5. At this stage, though the impugned order was passed on 09.09.2019 but as informed by learned counsel for the petitioner that no proceeding has been conducted thereafter and even as of now, no rebuttal evidence has been brought on record so far, hence, on the next date of hearing itself, the petitioner-defendant will conclude all his evidence.

6. Keeping in view the said fact that no further proceedings have been conducted by the Court below after the passing of the impugned order and the status of the suit is still at the stage where it was on the date when

the impugned order was passed, by treating the said factual position brought to the notice of this Court as correct, one more opportunity is granted to the petitioner-defendant to lead his entire evidence on the next date of hearing. The duty to produce the evidence will also be of the petitioner-defendant himself. No further opportunity will be granted, in case the opportunity being granted by the present order is not availed.

7. However, the said opportunity being granted to the petitioner-defendant is subject to payment of Rs.20,000/- as cost to the respondent-plaintiffs for the delay which has been caused due to the acts attributed on the part of the petitioner-defendant. The trial Court is directed that in case the cost already imposed vide order dated 26.08.2019 as well as the cost imposed by the present order is deposited by the petitioner-defendant, the opportunity be granted to lead the evidence on the next date of hearing.

8. The present civil revision petition is allowed in above terms.

May 15, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No