

CR No.5490 of 2023 (O&M) 1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(124)

CR No.5490 of 2023 (O&M)

Date of Decision:29.09.2023.

Reshma Yadav

.....Petitioner

Versus

District Town planner and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Jai Vir Yadav, Senior Advocate with
Ms. Parul, Advocate
for the petitioner.

VIKRAM AGGARWAL, J. (ORAL)

1. The present petition assails the order dated 22.08.2023 (Annexure P-4) passed by the Court of Civil Judge (Junior Division), Gurugram, vide which the evidence of the petitioner-plaintiff was closed by orders of the Court on the ground that despite availing seven opportunities, no evidence had been led.

2. The facts, as emanating from the revision petition, are that the petitioner-plaintiff filed a suit for permanent injunction for restraining the respondents-defendants from demolishing or removing the residential house of the petitioner-plaintiff (fully described in the plaint) situated in DLF Phase-3, Gurugram.

3. During the course of the trial, vide order dated 22.08.2023, evidence of the petitioner-plaintiff was closed by observing that despite having availed seven opportunities, the petitioner-plaintiff had failed to conclude her evidence. It is against this order that the present revision petition has been preferred.

4. Learned Senior counsel has submitted that the petitioner-plaintiff would require only one effective opportunity to lead and conclude her evidence. It has also been undertaken that no further delay would be caused by the petitioner-plaintiff and no adjournment would be sought. It has also been undertaken that costs imposed by the trial Court shall be paid on the next date of hearing.

5. Notice is not being issued to the respondents-defendants as the disposal of the present revision petition shall not affect the rights of the respondents-defendants.

6. I have considered the submissions made by learned counsel for the parties representing the petitioner-plaintiff. No doubt, the petitioner-plaintiff availed seven opportunities, but did not lead any evidence. The costs were also not paid. Though I do not find any illegality in the order, I deem it appropriate to grant one opportunity to the petitioner-plaintiff to conclude her evidence as matters should always be decided on merits and the parties should not be non-suited on technicalities.

In view of the above, the present revision petition is allowed. The order dated 22.08.2023 passed by the Court of Civil Judge (Junior Division), Gurugram is set aside. One opportunity is granted to the petitioner-plaintiff to lead and conclude her evidence on a date to be fixed as per the convenience of the trial Court. This shall however be subject to payment of costs of ₹5,000/- to the defendant. The payment of these costs and those imposed by the trial Court shall be a condition precedent to the fixation of a date for evidence.

September 29th, 2023
Rekha

(VIKRAM AGGARWAL)
JUDGE

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