

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(134)

CR-5503-2023

Date of Decision: 19.09.2023

HARDIAL SINGH

...Petitioner

VS

NIRANJAN SINGH AND ANOTHER

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Sarabjit Singh, Advocate
for the petitioner.

VIKRAM AGGARWAL, J (ORAL)

The present revision petition assails the order dated 04.09.2023 passed by the Sub Divisional Judicial Magistrate, Baba Bakala Sahib vide which the evidence of the petitioner-defendant No.1 was closed by orders of the Court.

2. The facts, as emanating from the revision petition, are that a suit for joint possession by way of specific performance of agreement to sell dated 01.07.2019 was filed by the respondent-plaintiff against the petitioner-defendant No.1. During the course of the trial, on 04.09.2023, no witness of the petitioner-defendant No.1 was present. The trial Court after observing that numerous opportunities had been availed by petitioner-defendant No.1 to conclude his evidence closed the same by orders of the Court leading to the filing of the revision petition.

3. Learned counsel for the petitioner has submitted that the non-appearance of the petitioner-defendant No.1 on 04.09.2023 was genuine on account of the fact that he was unwell. Reliance has been placed upon the medical card (Annexure P-5). It has been submitted that even otherwise, only one opportunity would be required by the petitioner-defendant No.1 to lead his evidence as only defendant No.1 has to step into the witness box and no other witness is to be examined.

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4. I have heard learned counsel for the petitioner.
5. Since the decision of the present revision petition shall not affect the rights of the respondents, notice is not being issued.
6. A perusal of the paper book shows that the case was fixed for evidence of the petitioner-defendant No.1 for the first time on 20.03.2023. The defendant evidence was closed vide order dated 04.09.2023. In between, 10 effective opportunities were granted to the petitioner-defendant No.1 but only three witnesses were examined. On a couple of occasions, the Bar was abstaining from work. Since the petitioner-defendant No.1 availed 10 opportunities, the trial Court, in the considered opinion of this Court, did not commit any illegality in closing the evidence of the petitioner-defendant No.1. However, at the same time, it has to be borne in mind that matters should be decided on merits and parties should not be non-suited on technicalities. In the considered opinion of this Court, one opportunity deserves to be granted to the petitioner-defendant No.1 to lead his evidence failing which his rights may be adversely affected.
7. Keeping in view the facts and circumstances noticed above, the present revision petition is allowed. The order dated 04.09.2023 passed by the trial Court is set aside. The Trial Court is directed to grant one effective opportunity to the petitioner-defendant No.1 to lead and conclude his 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 be paid to the plaintiff.

(VIKRAM AGGARWAL)
JUDGE

19.09.2023
Hemant

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