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

CR-5662-2023

Date of Decision:- 16.10.2023

VISHNU DEVI @ VISHANA DEVI
Vs.

...Petitioner

SUBASH CHAND UPADHYAY

...Respondent

CORAM:-HON'BLE MS. JUSTICE AMARJOT BHATTI

Present: Mr. Munish Behl, Advocate for the petitioner.

AMARJOT BHATTI, J. (Oral)

1. The petitioner – Vishuna Devi @ Vishana Devi has filed civil revision petition under Article 227 of the Constitution of India read with Section 151 CPC for quashing of order dated 23.08.2023, Annexure P-6, passed by Civil Judge (Jr. Divn.), Faridabad whereby the evidence of the respondent has been closed by order.

2. Learned counsel for the petitioner argued that the plaintiff had filed suit for possession by way of specific performance of agreement dated 15.02.2018. Copy of plaint is Annexure P-1. On notice, the defendant had appeared and filed his written statement which is Annexure P-2. The issues were framed and the case was fixed for plaintiff's evidence. The copy of zimni order dated 15.07.2019 is Annexure P-3. The evidence of the plaintiff commenced on 30.08.2019 and it was ultimately closed on 09.09.2022. The copy of zimni order dated 09.09.2022 is Annexure P-4. Thereafter the case was fixed for the evidence of the defendant i.e. the present petitioner. It is admitted that the statements of

Vishnu Devi @ Vishana Devi DW1 and Avdesh DW2 were recorded and their cross-examinations were deferred. The cross-examination of Vishnu Devi could not be concluded and ultimately the evidence was closed by impugned order dated 23.08.2023 which is Annexure P-6. The counsel for the present petitioner pointed out that now the case is fixed for rebuttal evidence, if any and arguments. The present petitioner may be given one opportunity for the cross-examination of Vishnu Devi – defendant who was examined in this case as DW1, otherwise the case of defendant will be adversely affected. It is prayed that the next date fixed in this case is 18.10.2023.

3. I have considered the arguments and have gone through the record. It cannot be ignored that the present petitioner availed large number of opportunities to conclude their evidence. The trial Court accommodated the present petitioner liberally. Even then the present petitioner failed to conclude the evidence. Vishnu Devi who is one of the defendant could not be cross-examined whose examination-in-chief by way of affidavit was recorded on 14.11.2022. Thereafter, large number of opportunities were availed by the defendant but the cross-examination of Vishnu Devi DW1 was not completed. Last opportunity was also granted, even the same was not taken seriously and ultimately the trial Court was left with no other alternative but to close the evidence by order. Now the present civil revision has been preferred seeking one opportunity for the cross-examination of DW1 Vishnu Devi. The copy of plaint indicates that it is a suit for specific performance of agreement to sell dated 15.02.2018. Vishnu Devi the present petitioner is defendant in the case. Considering the nature of litigation, lenient view is taken. No notice is served upon the

respondent to avoid unnecessary delay and litigation expenditure to the respondent. He can be fairly compensated by imposing costs. For proper and final adjudication of the case, the Civil Revision filed by the present petitioner is accepted. The impugned order dated 23.08.2023 (P-6) is set aside by granting one opportunity to the present petitioner to appear in the Court for her cross-examination. The next date fixed in this case is 18.10.2023. In-case the witness is not cross-examined by the counsel for the plaintiff on that day then another short adjournment within a span of 10 days be given to the petitioner/defendant to appear in the Court for cross-examination, subject to payment of costs of Rs.10,000/- to be paid to the respondent/plaintiff. The Civil Revision is, accordingly, disposed of.

Pending application (s), if any, also stands disposed of.

16.10.2023

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(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned: Yes/No.

Whether reportable: Yes/No