

113.

2023:PHHC:147828

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

CR-5696-2023 (O&M)

Date of decision: 21.11.2023

Gurwinder alias Vicky @ Gurwinder Kumar

.... Petitioner

Versus

Ritika and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Munish Raj Chaudhary, Advocate, for the petitioner.

GURBIR SINGH, J. (Oral)

1. Prayer in this revision petition filed under Article 227 of the Constitution of India is for setting aside the order dated 15.11.2022 (Annexure P-9) passed by learned Additional Civil Judge (Senior Division), Phul, whereby the evidence of the petitioner/defendants has been closed by order.

2. The brief facts, as culled out from the petition, are that respondents No.1 and 2-plaintiffs filed a suit for recovery of Rs.30 lacs as compensation on account of death of their father, namely, Vijay Kumar alias Kala, which was allegedly caused due to the instigation, torture, harassment and humiliation caused by the petitioner-defendants. The said suit was filed by the plaintiffs through their grandmother being minor at that time. The deceased-Vijay Kumar alias Kala was married to Parveen Rani, daughter of Subhash Kumar, defendant No.1-respondent No.3. From the said wedlock, three children were born i.e. two girls, namely, Ritika and Pallavi,

respondents No.1 and 2-plaintiffs, and one son, namely, Gur Parshad, who is in the custody of mother Parveen Rani. Since the date of marriage of Vijay Kumar alias Kala, his in-laws i.e. defendants No.1 to 3 were interfering in their married life and were causing harassment and humiliation, due to which, Vijay Kumar alias Kala committed suicide on 20.01.2011. In this respect, an FIR was registered on 20.12.2011. Since the case arising out of FIR was pending in the court of Additional Sessions Judge, Bathinda, defendant No.1-Subhash Kumar, respondent No.3 filed an application for stay of proceedings of the suit till the decision in the FIR case. However, vide order dated 10.10.2022 (Annexure P-4), said application was dismissed. Aggrieved against the said order, respondent No.3-defendant No.1 filed Civil Revision bearing No.5138 of 2022 before this Court, which was ultimately dismissed vide order dated 13.09.2023.

3. In the suit, after completion of evidence of the plaintiffs, the case was fixed for the evidence of defendants. However, the petitioner-defendants could not lead their evidence and vide order dated 15.11.2022, the trial Court closed the evidence by observing that they had already availed 24-25 opportunities including last opportunity. By way of present revision petition, petitioner-defendant No.3 is seeking one opportunity to examine himself.

4. Learned counsel for the petitioner-defendant No.3 submits that the petitioner-defendant No.3 would be satisfied if one opportunity is granted to him to examine himself and he would not seek any other opportunity to lead evidence. The case before the trial Court is fixed for hearing on 29.11.2023.

5. I have heard the submissions of learned counsel for the petitioner and have gone through the paper book.

6. Keeping in view the fact that the procedure is handmaid to the administration of justice and it is meant for advancement of justice; the petitioner should not be non-suited merely on procedural technicalities.

7. If notice of this petition is given to the respondents, then it may linger on the case and may cause financial burden on them.

8. So, in the interest of justice, present petition is disposed of with a direction to the trial Court to give one opportunity to the petitioner-defendant No.3 to appear as his own witness but subject to payment of costs of Rs.5,000/- to the respondents No.1 and 2-plaintiffs. The petitioner-defendant No.3 shall be examined-in-chief on the date fixed i.e. 29.11.2023 and if for any reason, he is not cross-examined on the said date, then he be cross-examined on the next date to be fixed by the trial Court and no further opportunity shall be granted for this purpose.

9. If the respondents-plaintiffs are not satisfied with this order, they can move an application for recalling of this order within 30 days.

10. Pending application, if any, shall also stand disposed of.

(GURBIR SINGH)
JUDGE

November 21, 2023

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Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No