

CR-6512-2019 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CR-6512-2019 (O&M)

Date of decision: 13.07.2023

Avtar Singh

..... Petitioner

Versus

Kultar Singh and Another

..... Respondents

CORAM: HON'BLE MS. JUSTICE AMARJOT BHATTI

Present: Mr. Gursahib Singh Ghumman, Advocate
for the petitioner.Mr. Tejinder Pal Singh, Advocate
for respondent No. 1.

AMARJOT BHATTI J. (ORAL)

1. Avtar Singh has filed civil revision against impugned order dated 01.10.2019 (Annexure P-15), whereby, the evidence of the petitioner was closed by order with further prayer to set aside/modify the impugned order dated 19.09.2019 (Annexure P-9) and impugned order dated 30.09.2019 (Annexure P-12) passed by learned trial Court.

2. The learned counsel for the petitioner argued that the plaintiff has filed suit for declaration alongwith suit for permanent injunction. Copy of plaint is Annexure P-3. The suit is contested by the present petitioner Avtar Singh and another. The copy of written statement filed by defendants No. 1 and 2 is Annexure P-4. After the closing of evidence of plaintiff, the case was fixed for defendants' evidence. The present petitioner wanted to examine Hazara Singh in defence who is a material witness to the execution of Will (Ann. P2). The other

witness of the Will has already expired. Without considering the importance of examination of witness Hazara Singh, the evidence of defendants was closed by order vide impugned order dated 01.10.2019. It is further argued that earlier the presence of Hazara Singh witness could not be procured as he was involved in some other case, therefore, he was not available on the given address. His presence could not be procured despite genuine efforts. It is prayed that the petitioner may be given one opportunity to examine Hazara Singh as witness on the next date of hearing i.e. on 19.08.2023, the date already fixed before the trial Court.

3. The stand taken by the learned counsel for the petitioner is opposed by learned counsel for respondent No. 1. It is argued that the defendants were given number of opportunities to conclude their evidence but they failed. The trial Court was left with no other option but to close the evidence by order. Therefore, the impugned order dated 01.10.2019 (Annexure P-15) does not require any interference. However, it is pointed out that in case any opportunity is to be provided to the petitioner to examine Hazara Singh witness, then heavy cost may be imposed upon the petitioner.

4. I have considered the arguments and have gone through the record. The copy of plaint shows that suit was filed in the year 2014 which is still pending. The plaintiff has already concluded the evidence. The record indicates that even the defendants were afforded number of opportunities to conclude their evidence. The perusal of zimni orders placed on record indicates that the presence of DW Hazara Singh was ordered to be procured even through arrest warrants. The record indicates that the defendants were making every possible effort to procure the presence of Hazara Singh. As per the version of petitioner/defendant No. 1, Hazara Singh is a material witness being marginal witness of the Will. It is

always in the interest of justice that both the parties are given opportunity to conclude their evidence so that the case is decided on merits. At present, the learned counsel for petitioner is requesting only for one adjournment to examine Hazara Singh in defence on the date already fixed before the trial Court. The respondent No. 1/plaintiff can be suitably compensated by imposing cost upon the petitioner. In view of these facts, the revision preferred by the petitioner is accepted and the defendants are afforded one more opportunity to examine Hazara Singh in defence on the next date of hearing before the trial Court, subject to payment of cost of ₹10,000/- to the respondent No. 1/plaintiff.

Pending application, if any, shall stands disposed of.

(AMARJOT BHATTI)
JUDGE

13.07.2023
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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No