

CR-6818-2023

- 1 -

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

145

CR-6818-2023

Decided on : 14.11.2023

Canara Bank through its GPA

. . . Petitioner(s)

Versus

M/s Bhupinder Hosiery VPO Darbi and another

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Rahish Pahwa, Advocate and
Mr. Annie Surya, Advocate
for the petitioner(s).

SANJAY VASHISTH, J. (Oral)

1. Present revision petition has been directed by the petitioner against the order dated 04.10.2023 (P-1), passed by Ld. Civil Judge (Junior Division), Sirsa, whereby, evidence of the petitioner (plaintiff therein), has been closed on account of the fact that despite availing several effective opportunities, petitioner failed to conclude his evidence.

2. Briefly, facts of the case are that plaintiff (petitioner herein) filed a suit for Recovery of Rs. 11,19,843/- against the defendants (respondents herein) in which, notice was issued for 20.05.2020 to defendants. After completion of pleadings, issues were framed on 10.08.2021 by Learned Trial Court and the case was fixed for plaintiff's evidence for 08.11.2021.

3. For the sake of convenience and brevity, the proceedings conducted before the Learned Trial Court on various dates is represented below chronologically:

Date (s)	Proceeding(s) before the Learned Trial Court
20.05.2020	Notice issued to defendants
08.11.2021	Case fixed for plaintiff’s evidence and adjournment sought by plaintiff
07.02.2022; 15.03.2022 and 04.05.2022	Adjournments sought by plaintiff
04.07.2022	PW-1 (Dilbag Singh) and PW-2 (Dharamveer Singh) were examined-in-chief, however, cross examination of PW-1 and PW-2 deferred at the request of defendants
12.09.2022	PW-2 (Dharamveer Singh) cross-examined, however, cross-examination of PW-3 (Dinesh Sharma) was deferred due to paucity of time
11.11.2022; 30.01.2023; 16.03.2023 and 31.05.2023	Plaintiff sought adjournments to conclude its evidence
16.08.2023	Plaintiff produced three witnesses i.e. PW-1 (Dilbag Singh), PW-4 (Shilpa Kocher) and PW-5 (Sunil Kumar Chhabra), however, cross-examination of only PW-1 was completed and cross examination of PW-4 was only partly conducted
04.10.2023 (Annexure P-1)	Plaintiff could produce only PW-4 and hence, evidence of plaintiff was ordered to be closed and the case was adjourned to 25.10.2023 for defendants’ evidence.

4. Counsel for the petitioner submits that if one opportunity is granted, subject to the payment of some costs, he undertakes to complete his

CR-6818-2023

- 3 -

evidence by producing the witnesses. Counsel for the petitioner further submits that now, the suit proceedings were fixed for 25.10.2023, and now stands adjourned for leading of the defence evidence, which is yet to start. If one more opportunity is granted to the petitioner (plaintiff therein), no loss or prejudice is going to be caused to the defendant(s).

5. Without issuing notice to other parties, as it will not only waste the time of the Court, but unnecessarily put burden on the other parties also towards the costs to be incurred for appearing before this Court, which may further linger on the litigation proceedings, I deem it appropriate to consider the relief, as sought by the petitioner in present revision petition.

6. Counsel for the petitioner also undertakes to conclude his evidence only in one opportunity. Besides this, counsel for the petitioner submits that in similar circumstances, the Coordinate Benches of this Court have already granted opportunities for leading evidence and one such case is **Ramu Gupta Vs. Harpreet Kaur and another (CR No.1447 of 2017 (O&M) D/d: 01.03.2017)** (Law Finder Doc ID # 906700), and refers to para Nos. 8 to 13 of the said judgment, which are as under:-

“8. It is a settled preposition of law that scope of exercise of judicial discretion to achieve the ends of justice, in furtherance to the provisions of Code of Civil Procedure is the basic question which deserves consideration in the present case. A limited prayer has been made by learned counsel for the petitioner, while challenging the impugned order dated 30.11.2016, that the petitioner be granted one effective opportunity to lead evidence as adequate opportunities were not granted and his evidence was closed by Court order. On perusal of impugned order, it is found that simply it has been mentioned that the case is pending for defendant's evidence who had already availed five effective opportunities including one last opportunity for leading and concluding its entire evidence but it was not completed. Speedy trial is fundamental right of the litigants and

no good ground is made out to linger on the case for evidence of defence and as such the defence evidence was closed by Court order. The learned trial Court ought to have granted one more opportunity to lead evidence and ought not to have passed the order closing the evidence of the plaintiff.

9. In case **Joginder Singh and others vs. Smt. Manjit Kaur, 2000 (2) RCR (Civil) 382**, this Court has observed as under:-

“3. Should such discretion by the Court can ever be termed as "uncontrolled and un-guided exercise of judicial discretion by the Court? "I have no hesitation in answering the above question in the negative. Certainly, it is not possible for the Court to provide the panacea to all problems arising at different stages of the suit. The Code of Civil Procedure is a comprehensive code and the different stages of a suit are controlled and regulated by various checks and limitations provided in the Code. The pious wish of the legislation for expeditious disposal of the suit runs like a golden thread in the various provisions of the Code. The inherent powers vested in the Court under section 151 of the C.P.C. are of very wide magnitude, but are certainly controlled by self restraints and restrict exercise of such powers depending on merit of each case. The Court is under an implied obligation to balance the equities between the parties to a suit to achieve the ends of justice, which is the basic paramount object of the Code. The equities would demand that power under the provisions of the Code or the inherent powers should be exercised by the Court to correct imbalances or inequities resulting from unnecessary adjournments, between the parties. As a result of fault of one party to the suit, the other is certainly put to inconvenience or unnecessary harassment. Delay in conclusion, of "proceedings again is a factor of vital importance, as such, uncontrolled opportunity to a party to conclude its evidence in any number of opportunities would certainly prejudice the interest of the other party to the suit, who is exposed to prolong litigation and expense. Thus, there has to be a stage when the Court must decline to grant further opportunity to the defaulting party to conclude its evidence.”

10. Similar view has been taken by this Court in **Kaila Devi and others vs. State of Haryana in C.M. No. 2726-CI of 1993 in RFA No. 459 of 1988, decided on 17.12.1998**, which is as under:

“Inherent powers cannot be used as an instrument to intrude the powers of the Court in regard to a procedure or a remedy, if specifically provided in other provisions of the Code. No code or law could be codified so as to provide for each and every situation, at every stage of the proceedings arising from the vacuum left in the enactment. Such situations are to be supplied by the Court by recourse to inherent powers to create a bridge over such situation for meeting the ends of justice or prevent abuse of process of law. To do justice is the

primary duty of the Court but duty imposed should be discharged in consonance with the provisions of the Code and within four corners of well enunciated principle, inherent powers being adjunct to the specifically provided powers of the Code as codified in the code. Thus they could not be used for disturbing the procedure provided under the Code because its ramification could prove retrograde to the administration of justice by Civil Court. Entertainment of such application would have the effect of infringing the concept of finality non-doctrine of civil jurisprudence."

11. *As per provisions of Orders 16 and 18 of CPC, the intention of Legislature is to fairly conclude the evidence of the parties without unreasonably compromising the expeditious disposal of the suit. The Court may grant further time to the party to commence the evidence. In case of default, the Legislature has given specific powers to the Court under Order 17 Rule 3 of the Code for disposal of the suit or to proceed with the suit as the Court may deem fit and proper. These powers vested in the Court cannot be rendered ineffective or meaningless by granting indefinite adjournments for leading evidence by a party. Such approach is bound to decimate the very purpose of the Code i.e. to achieve the ends of justice and deliver expeditious decision in the cases. Accordingly, such provisions can neither be rendered ineffective nor taken to nadir so as to render provisions of Code as trivial.*

12. *The procedural law is enacted with the object of doing substantial justice between the parties. Its purpose is to determine the dispute between the parties and provide finality to such determination. The intention is also to prevent multiplicity or frivolous litigation to achieve the object of the golden thread underlying the entire procedure prescribed under the Code. However, it is for the Court to determine, while exercising its discretion uniformly, by creating balance between the parties but such discretion is to be controlled by settled preposition of law keeping in view the facts and circumstances of each case.*

13. *Similar observation has been made by Hon'ble the Apex Court in case **State of Punjab and another vs. Shamlal Murari and another**, 1976 AIR (Supreme Court) 1177."*

7. For the reasons recorded in the referred judgments, and

CR-6818-2023

- 6 -

reproduced here-above, I deem it appropriate to grant one more effective opportunity to the petitioner to lead its entire evidence, subject to the payment of costs of **Rs.15,000/- for causing delay, which shall be paid to the opposite party i.e. defendant(s), before the Court below.**

8. Accordingly, present petition is allowed and the impugned order dated 04.10.2023 (P-1), to the extent of closing the evidence of the petitioner, is hereby set-aside. Petitioner is granted one last effective opportunity to lead his entire evidence. For the said purpose, petitioner will appear along with his witnesses before the Ld. Trial Court on 06.12.2023, or any other date, as fixed by trial Court, as per its convenience.

With the above terms, **petition stands disposed of.**

(SANJAY VASHISTH)
JUDGE

November 14, 2023

J.Ram

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*