

121.

2023:PHHC:148250

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

CR-6826-2023

Date of decision: 21.11.2023

SURINDER KUMAR

.... Petitioner

Versus

RAM DEV SHARMA

.... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Mandeep Singh Khillan, 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 01.09.2023 (Annexure P-5) passed by learned Civil Judge (Junior Division), Faridkot, whereby the evidence of the petitioner-plaintiff has been closed by order.

2. The brief facts, as culled out from the petition, are that the petitioner-plaintiff has filed a suit for possession by way of specific performance of agreement to sell dated 11.02.2014. On notice, defendant-respondent appeared and filed written statement. The petitioner-plaintiff filed replication to the written statement. Issues were framed on 22.04.2019. The case was adjourned on one pretext or the other. Thereafter on 02.09.2021, the respondent-defendant moved an application under Order 6 Rule 17 CPC for amendment of written statement. The plaintiff filed reply to said application, but vide order dated 11.07.2023, it was dismissed. Aggrieved, respondent-defendant approached this Court by way of Civil Revision No.4892 of 2023, which is pending.

3. The plaintiff availed numerous opportunities to complete his evidence, however, he failed to conclude his evidence despite last opportunity.

4. It is argued that the petitioner was ready with the evidence, but due to filing of application for amendment which was not disposed off for a considerable long period, so evidence could not be concluded. After dismissal of the amendment application, only two opportunities were granted i.e. 26.07.2023 and 14.08.2023. It is further submitted that the plaintiff-petitioner and one witness, namely, Vijay Kumar have been examined partly and he would be satisfied if one opportunity is granted for their cross-examination. The said witnesses shall be produced at own responsibility. The next date before the trial Court is 29.11.2023.

5. Keeping in view the fact that the application for amendment of written statement filed by respondent-defendant remained pending for a considerable long period and the plaintiff has already stepped into the witness-box as own witness and also examined Vijay Kumar and they have been partly examined, so no prejudice would be caused to the other party if they are cross-examined. It is well settled that technicalities should not come in the path of justice.

6. If notice of this petition is given to the respondent, then it may linger on the case and may cause financial burden on him

7. So, in the interest of justice, the order dated 01.09.2023 (Annexure P-5) is hereby set aside and present petition is disposed of with a direction to the trial Court to give one opportunity for the cross-examination of the petitioner-Surinder Kumar and Vijay Kumar, but subject to payment of

costs of Rs.15,000/-, out of which, Rs.5,000/- shall be deposited in the account of concerned Legal Services Authority and Rs.10,000/- to the respondent-defendant. Said witnesses shall appear in the trial Court on 29.11.2023 itself and shall be cross-examined by the other side on the said date or any other date as fixed by the learned trial Court. In case of default by the petitioner-plaintiff, then this order shall automatically stand vacated.

8. If the respondent-defendant is not satisfied with this order, he can move an application for recalling of this order within 30 days.

(GURBIR SINGH)
JUDGE

November 21, 2023

sanjeev

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No