

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

124

CR-6925-2023 (O&M).
Date of Decision: 04.12.2023.

Gurnam Singh

....Petitioner.

Versus

Kaushalaya Devi and others

....Respondents.

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Jagdish Singh Mahal, Advocate for petitioner.

Lalit Batra, J.(Oral)

CM-21674-CII-2023

Miscellaneous orders (Annexure P-4) passed by learned Trial Court, are taken on record, subject to all just exceptions.

Application stands allowed.

CM-21168-CII-2023

Exemption application allowed, as prayed for.

Main Case

This civil revision petition under Article 227 of the Constitution of India has been filed by petitioner/plaintiff impugning the legality of order dated 07.08.2023 (Annexure P-1), rendered by learned Additional Civil Judge (Senior Division), Gurdaspur, vide which evidence of petitioner/plaintiff was closed by Court order. Further, petitioner/plaintiff has challenged order dated

10.10.2023 (Annexure P-2) passed by learned Trial Court whereby, application under Section 151 CPC for setting aside order dated 07.08.2023 and allowing him to produce evidence, has been dismissed.

2. Learned counsel for petitioner/plaintiff *inter alia* contends that petitioner/plaintiff has filed a suit for declaration with consequential relief of permanent injunction, wherein respondents/defendants appeared and filed their respective written statements. During pendency of said civil suit, there was outbreak of COVID-19 Pandemic and the case was adjourned time and again. Though petitioner/plaintiff made his best efforts to produce his evidence and he himself appeared as a witness before the Trial Court as PW-1, however, vide order dated 07.08.2023, evidence of petitioner/plaintiff was closed by Court order. Thereafter, petitioner/plaintiff moved an application under Section 151 CPC for setting aside order dated 07.08.2023 and allowing him to produce evidence, which was also dismissed by learned Trial Court, vide order dated 10.10.2023. The petitioner/plaintiff could not conclude his evidence due to COVID-19 Pandemic and he is posted as 'Security Guard' in Punjab Police and was not granted leave for attending the Court proceedings and, thus, circumstances were beyond his control. The petitioner/plaintiff has a good case on merits before learned Trial court and if he is not permitted to lead evidence, his case may be prejudiced and the Court cannot arrive at proper conclusion. In case, the petitioner/plaintiff is not allowed one more effective opportunity to lead his evidence by examining Handwriting Expert, in that eventuality his entire case would be demolished and irreparable loss would be caused to him.

3. I have heard learned counsel for petitioner/plaintiff and have also gone through the contents of petition especially the documents placed on the record.

4. Notice of instant petition is not required to be given to respondents/defendants as entire documents i.e. copies of miscellaneous orders passed by learned Trial court are already on record. In order to avoid further delay in the litigation and unnecessary litigation expenditure, the service of notice to respondents/defendants is dispensed with.

5. Hon'ble Supreme Court in case M/s Shiv Cotex vs. Tirgun Auto Plast P. Ltd. and others, 2011(4) R.C.R. (Civil) 807, while dealing with provisions of Order XVII Rule 1 CPC and grant of adjournments during pendency of civil suit, observed as under:-

“15. xx xx xx xx xx xx xx xx xx xx
It is high time that courts become sensitive to delays in justice delivery system and realize that adjournments do dent the efficacy of judicial process and if this menace is not controlled adequately, the litigant public may lose faith in the system sooner than later. The courts, particularly trial courts, must ensure that on every date of hearing, effective progress takes place in the suit.

No litigant has a right to abuse the procedure provided in the CPC. Adjournments have grown like cancer corroding the entire body of justice delivery system. It is true that cap on adjournments to a party during the hearing of the suit provided in proviso to Order XVII Rule 1 CPC is not mandatory and in a suitable case, on justifiable cause, the court may grant more than three adjournments to a party for its evidence but

ordinarily the cap provided in the proviso to Order XVII Rule 1 CPC should be maintained. When we say 'justifiable cause' what we mean to say is, a cause which is not only 'sufficient cause' as contemplated in sub-rule (1) of Order XVII CPC but a cause which makes the request for adjournment by a party during the hearing of the suit beyond three adjournments unavoidable and sort of a compelling necessity like sudden illness of the litigant or the witness or the lawyer; death in the family of any one of them; natural calamity like floods, earthquake, etc. in the area where any of these persons reside; an accident involving the litigant or the witness or the lawyer on way to the court and such like cause. The list is only illustrative and not exhaustive. However, the absence of the lawyer or his non-availability because of professional work in other court or elsewhere or on the ground of strike call or the change of a lawyer or the continuous illness of the lawyer (the party whom he represents must then make alternative arrangement well in advance) or similar grounds will not justify more than three adjournments to a party during the hearing of the suit. The past conduct of a party in the conduct of the proceedings is an important circumstance which the courts must keep in view whenever a request for adjournment is made. A party to the suit is not at liberty to proceed with the trial at its leisure and pleasure and has no right to determine when the evidence would be let in by it or the matter should be heard. The parties to a suit - whether plaintiff or defendant - must cooperate with the court in ensuring the effective work on the date of hearing for which the matter has been fixed. If they don't, they do so at their own peril."

6. Insofar as present case is concerned, if the stakes were high, petitioner/plaintiff ought to have been more serious and vigilant in prosecuting

the suit and producing his evidence. Perusal of impugned orders dated 07.08.2023 (Annexure P-1), dated 10.10.2023 (Annexure P-2) and miscellaneous orders (Annexure P-4) reflects that after framing of issues in suit on 16.05.2019, as many as nineteen (19) effective opportunities had been availed by petitioner/plaintiff prior to 07.08.2023 and it was on the twentieth (20th) effective opportunity that the Court was constrained to close his evidence by order. On 07.08.2023, it was twelfth (12th) last opportunity to petitioner/plaintiff for leading his evidence, subject to payment of costs of Rs.50/- to be deposited with the Office of District Legal Services Authority, Gurdaspur, however, no witness of petitioner/plaintiff was present on that date. Even the adjournment sought by learned counsel for petitioner/plaintiff was opposed by learned counsel for the opposite. It can be said without hesitation that petitioner/plaintiff had availed much more than adequate opportunities for adducing his evidence. It was unfortunate for petitioner/plaintiff that even after availing twenty (20) effective opportunities, he was unable to conclude his evidence and thereby proceedings of civil suit have delayed considerably. If despite availing twenty (20) effective opportunities and liberal approach of learned Trial Court, petitioner/plaintiff had failed to conclude his evidence, in this scenario, he deserves no sympathy.

7. Thus, finding absolutely no justification for granting any further opportunity to petitioner/plaintiff and there being no irregularity or illegality in the impugned orders calling for any interference by this Court, the instant petition is dismissed.

8. Pending application, if any, also stands disposed of.

(LALIT BATRA)
JUDGE

04.12.2023

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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No