

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-6928-2023
Date of Decision:-17.11.2023

SANDEEP

... Petitioner(s)

Versus

HARI PARKASH AND ORS

... Respondent(s)

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CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

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Present:- Mr. S.S. Mor, Advocate
for the petitioner.

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KARAMJIT SINGH, J. (Oral)

1. The present revision petition has been filed by the petitioner/defendant No.1 for setting aside of impugned order dated 17th October, 2023 (Annexure P-4), passed by the Court of Civil Judge (Junior Division), Bahadurgarh, whereby the evidence of the defendants has been closed by order in civil Suit No.151/2018 titled Hari Parkash vs. Sandeep and Ors.
2. The counsel for the petitioner submits that respondent No.1 has filed false suit seeking decree of permanent injunction against the petitioner and other defendants with regard to property in question. That suit is contested by the petitioner, who filed written statement and thereafter

issues were framed and then respondent No.1 concluded his evidence and the case was fixed for evidence of defendants. It is further submitted that the examination-in-chief of DW Sandeep (petitioner) was recorded on 5th September, 2023 and his cross-examination was deferred for 26th September, 2023, but on that day Lawyers were on strike and the suit was adjourned to 17th October, 2023 for the same purpose and on that date due to some unavoidable circumstances, the petitioner failed to appear in the Court for his cross-examination and consequently the evidence of the defendants was closed by order vide impugned order (Annexure P-4). The counsel for the petitioner further submits that there was no intention on the part of the petitioner to delay the proceedings in the suit. It is further contended that with the passing of the impugned order, the rights of the petitioner have been prejudiced and prayer is made that one effective opportunity be given to the petitioner for his cross-examination and to examine one another DW i.e. concerned Draftsman, who prepared the site plan of site in dispute.

3. I have considered the submissions made by the counsel for the petitioner.
4. Undoubtedly the provision of Order 18 Rule 17-A CPC was deleted w.e.f. 1st July, 2002. However, provisions under Section 151 CPC provides Court with inherent power to exercise jurisdiction for advancement of justice. No doubt several opportunities were given to the petitioner by the trial Court to adduce his evidence, but he was not able to do so inspite of the adjournment granted even on payment of

costs and thus the petitioner was somewhat negligent in his conduct. From the perusal of the impugned order (Annexure P-4), it appears that the cost, which was imposed on the petitioner by the trial Court on the last date of hearing was deposited on 17th October, 2023, by the petitioner.

5. The evidence, which the petitioner requires to adduce, including his own cross-examination, is necessary for just decision of the case. If the petitioner is disallowed from adducing the aforesaid evidence, a great injustice would be caused to him. It is a settled proposition of law that the scope of exercise of judicial discretion is to achieve the ends of justice. The closing of evidence of the petitioner amounts to extreme penalty, when the other party could have been compensated by reasonable cost while affording one last opportunity to the petitioner to conclude his evidence, by the trial Court.
6. Keeping all the facts and circumstances of the case, this Court is of the opinion that the petitioner deserves to be given one last opportunity to conclude his evidence, which also includes his own cross-examination.
7. In view of the above, the revision petition is allowed and the impugned order is set aside. The petitioner is granted one effective opportunity to adduce his complete evidence including his cross-examination and to examine any other DW subject to cost of ₹7,500/-, which is to be paid by the petitioner to the opposite party on the next date of hearing and for recording of the said evidence a specific date has to be fixed by the learned trial Court.

8. Keeping in view the circumstances mentioned above, this petition is being disposed of without issuing any notice to the opposite party. However, liberty is granted to the respondents that if they feel dissatisfied with this order, they may move an application to recall the same.

17.11.2023
Gaurav Sorot

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No