

CR-8096-2019(O&M)

256

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-8096-2019 (O&M)

Date of decision: May 02, 2023

Darshan Singh

....Petitioner

versus

Nachhattar Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Rakesh Chopra, Advocate,
Mr. Jashan Chopra, Advocate for petitioner.

Mr. Naresh Kaushal, Advocate for respondents No.2 and 3.

ARUN MONGA, J. (ORAL)

Present revision petition *inter alia* is for setting aside impugned order 14.08.2019 (Annexure P-1) whereby learned Civil Judge (Junior Division), Khanna has closed the evidence of petitioner/plaintiff.

2. The revision petition is premised on the averments that petitioner and pro forma respondent No.4 (plaintiffs) filed suit for permanent injunction restraining respondent No.3 herself, through agents or servants from interfering or causing to interfere in the peaceful possession of plaintiffs over the property mentioned in plaint and also from dispossessing them from suit property forcibly and illegally and further relief has been sought of injunction from damaging or causing damage to wheat crop standing in the property in dispute sown by plaintiffs.

2.1. Vide impugned order dated 14.08.2019 (Annexure P-1), learned trial Court closed the evidence of plaintiffs by order of the Court stating that plaintiffs already availed 16 effective opportunities for their evidence, but despite that they failed to conclude the same.

3. I have heard learned counsel for the parties and perused the case file.

CR-8096-2019(O&M)

4. Following are averments of petitioner/plaintiff No.1 pleaded in the present revision petition stating chronologically the proceedings that happened before learned trial Court:

“4. After the pleadings were complete, the Ld. Civil Judge framed the issues on 2.7.2016 and case was adjourned to 2.8.2016 for the evidence of the Petitioner/Plaintiff. On 2.8.2016, the work was suspended by Bar Association and case was adjourned to 16.9.2016 and then case was adjourned to 13.10.2016, then to 8.11.2016 and then to 6.12.2016. On all these days the evidence of the Petitioner was not present. From 6.12.2016 the case was adjourned to 11.1.2017. On 11.1.2017 the Petitioner tendered his affidavit as PW-1 and case was adjourned to 30.1.2017 for his cross examination. From 30.1.2017 the case was adjourned to 28.2.2017, as on the said date Petitioner was not cross-examined inspite of he being present. Similarly it was adjourned to 24.3.2017 on 28.2.2017 and then to 1.5.2017 on 24.3.2017 due to the same reasons. On 1.5.2017 the original file was not received and the case was adjourned to 4.7.2017. On 4.7.2017 the case file has come by transfer and it was adjourned to 24.8.2017. Due to original file before the Ld. Appellate Court, the case was adjourned to 1.10.2017 and from that date to 16.12.2017 and then to 8.2.2018 and then to 15.3.2018 and then to 2.4.2018 and then to 31.5.2018 and then to 2.8.2018 and then to 4.9.2018 and then to 29.10.2018. On 29.10.2018 the file was received and case was adjourned to 27.11.2018. On 27.11.2018 it was adjourned to 18.12.2018 and then to 28.1.2019, as no Pw was present. On 28.1.2019 the case was adjourned to 26.2.2019 for the additional reasons that counsel for the Petitioner was not well and hence not present. The case was adjourned 20.3.2019 on 26.3.2019 as Petitioner was not cross examined inspite of being present due to joint request by the counsel. On 2.3.2019 the case was adjourned to 29.4.2019, as counsel for the Petitioner was not available, though Petitioner was present and then it was adjourned to 20.5.2019 as Petitioner requested for the same. On 20.5.2019 the case was adjourned to 16.7.2019 as work was suspended by the Bar Association Khanna, though Petitioner was present for cross examination. On 16.7.2019 no evidence was present and case was adjourned to 14.8.2019. On 14.8.2019 the impugned order Annexure P-1 was passed. The true copies of the all the abovesaid zimmni order are annexed as Annexure P-2 (Colly).”

5. Perusal of above reflects that no doubt, there has been delay on the part of petitioner/ plaintiff No.1 to appear in the witness-box as PW-1, but said delay, as is borne out from the aforesaid chronology, is not entirely attributable to plaintiffs. There are other reasons which seem to have been lost sight of by learned trial Court while closing evidence of plaintiffs.

CR-8096-2019(O&M)

6. I am of the view that delay in trial seems to have weighed in the mind of Court below. The delay in trial is also detrimental to plaintiffs themselves as it is their trial which will get delayed in case they are allowed to adduce evidence at this stage.

7. Trite law it is that procedure is the handmaid of justice and, ought not be given precedence at the cost of subjugation of substantive justice. The procedural provisions cannot be allowed to thwart real and substantial justice between the parties. The valuable right of litigants to establish their cases by adducing evidence ought not to be taken away by the Court except in a case of their deliberate omission/ failure to produce evidence more so if the other side can be compensated by costs. Prejudice would indeed be caused to petitioners herein, unless afforded an opportunity to conclude evidence. Trial in injunction suit may lead to unjust consequences in the absence of further opportunity to petitioners to lead evidence.

8. In the peculiar premise, impugned order dated 14.08.2019 (Annexure P-1) is set aside. Learned trial Court shall grant two effective opportunities to plaintiffs for his remaining evidence, subject to payment of costs of Rs.5,000/- to be paid to respondents No.1 to 3-defendants. However, it is made clear that learned trial Court shall be at liberty to grant further opportunity depending upon its work exigencies.

9. Disposed of, accordingly.

10. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

May 02, 2023

mahavir

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No