



CR No.244 of 2019
CR No.293 of 2019

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

340

Date of Decision: 22.07.2024

1. CR No.244 of 2019

Manoj

..... Petitioner

Versus

Sajjan and another

..... Respondents

2. CR No.293 of 2019

Sube Singh

..... Petitioner

Versus

Sajjan and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Sant Lal Barwala, Advocate
for the petitioner (in both petitions).

Mr. Mohit Garg, Advocate
for the respondents (in both petitions).

VIKAS BAHL, J (ORAL)

1. This order shall dispose of two revision petitions i.e. CR-244-2019 filed by Manoj son of Sube Singh and CR-293-2019 filed by Sube Singh son of Lehari.

2. The challenge in both the cases is to two separate orders of even date i.e. 05.12.2018 passed by the trial Court in two separate suits,



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vide which, two separate applications filed by the petitioner(s) for calling the material witnesses, have been dismissed.

3. Manoj (petitioner in CR-244-2019) had filed a suit for possession by way of specific performance against the respondents-defendants with respect to agreement to sell dated 17.11.2015. Sube Singh (petitioner in CR-293-2019) had filed a suit for possession by way of specific performance against the respondents/defendants with respect to agreement to sell dated 13.06.2016. The respondents in both the cases are the same.

4. That both the cases in the trial Court were fixed for 31.10.2018 on which date as is apparent from para 4 of the impugned order(s) dated 05.12.2018, the witness Ajay-Clerk, Tehsildar Kheri was examined by the plaintiff(s)/petitioner(s).

5. Learned counsel for the petitioner(s) has submitted that on the said date ie. 31.10.2018, when the evidence of the abovesaid witness of the petitioner(s) was to be recorded, the petitioner(s) had moved two separate applications on 31.10.2018 in both the said cases for examining other material witnesses. The said applications have been dismissed vide the impugned order(s).

6. It is argued that it is necessary for the petitioner(s) to examine Manjeet who is an attesting witness of the agreement to sell dated 17.11.2015 in the civil suit filed by Manoj and similarly, it is also necessary to examine Ramjeet who is the attesting witness of the agreement to sell dated 13.06.2016 in the civil suit filed by Sube Singh. It is argued that since on the date of passing of the impugned order(s), the petitioner'(s) evidence



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was continuing, thus the said opportunity should have been granted to the petitioner(s) to lead the evidence of the said witnesses as the same were material witnesses and their non-examination could seriously prejudice the case of the petitioner(s). It is further submitted that the defence evidence has not been started yet and since both the suits have been filed by the plaintiff(s) for specific performance, therefore, no prejudice would be caused to the respondents in case one effective opportunity is granted to the petitioner(s) to examine the said two witnesses in the two suits.

7. Learned counsel appearing for the respondents in both the cases has submitted that, as is apparent from the impugned order, sufficient opportunities were granted to the petitioner(s) to lead evidence and the evidence of the petitioner(s) was at an advanced stage and has further submitted that on 17.10.2018, petitioner(s) had stated that they wish to examine only one witness i.e. Ajay Clerk, Tehsildar Kheri and once the said witness was examined on 31.10.2018, then the petitioner(s) should have closed their evidence instead of moving the present application(s). It is submitted that impugned order(s) are legal and valid and deserve to be upheld.

8. This Court has heard learned counsel for the parties at length and with their able assistance has perused the record.

9. It could not be disputed that on 31.10.2018, when the application(s) were filed, the plaintiff(s) evidence was continuing in both the cases and one Ajay Clerk, Tehsildar Kheri was examined. The said fact is also apparent from a perusal of paragraph 4 of the impugned order(s) dated 05.12.2018. It has also not been disputed that the defence evidence



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has not started yet. It is the case of the petitioner(s) that the attesting witness(es) of the two agreements are material witnesses and their non-examination could cause serious prejudice to the case of the petitioner(s). Since in both the cases, it is the petitioner(s) who have filed suit(s) for possession by way of specific performance and thus, the delay caused in the same would primarily prejudice the petitioner(s).

10. Keeping in view the facts and circumstances, both the present petitions are partly allowed and the impugned orders dated 05.12.2018 (in both petitions) are set aside. The petitioner(s) are granted one effective opportunity each to examine Manjeet, attesting witness in the civil suit filed by Manoj and Ramjeet, attesting witness in the civil suit filed by Sube Singh on their own risk and responsibility and the same would be subject to payment of costs of Rs.5,000/- each to be paid to the respondents/defendants within a period of two weeks from today.

11. It is made clear that in case the said cost (in each of the cases) is not paid to the respondents, then the present petitions would be deemed to have been dismissed.

22.07.2024
D.Bansal

(VIKAS BAHL)
JUDGE

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