

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

140

CR-409-2024
Decided on:23.01.2024

Atma Ram

...Petitioner

Versus

Municipal Corporation Panipat and others

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Munish Kumar Garg, Advocate
for the petitioner.

Ms. Safia Gupta, AAG, Haryana
for respondents No.2 and 3.

RITU TAGORE, J.(Oral)

1. Petitioner, who is plaintiff in a Civil Suit bearing No.1722 of 2018 titled 'Atma Ram Vs. MC, Panipat and others', filed this revision against the order dated 08.11.2023, vide which learned Lower Court ordered the closure of petitioners' oral evidence, and posted the case for cross-examination of petitioner (plaintiff) and production of documentary evidence, if any, by him.
2. Learned counsel for the petitioner made a limited prayer to afford him two effective opportunities to present and conclude his evidence. The learned counsel fairly conceded that list of witnesses (Annexure P-6), as placed on record in this revision was not formally tendered before the learned lower Court by the petitioner. The counsel submits that, out of nine witnesses listed, the petitioner intends to examine Balwan Singh son of Sh.Lakhi Ram and Sunil Kumar son of Sh.Atma Ram although his name is not included in the list as witnesses. The learned counsel also undertakes to conclude the aforesaid

evidence in two effective opportunities. A prayer is thus made to set aside the impugned order.

3. Keeping in view the limited scope of prayer made, notice to respondent No.1 is dispensed with.

4. Ms. Safia Gupta, AAG, Haryana supported the impugned order.

5. I have heard learned counsel for the parties and gone through the record with their able assistance.

6. It is a matter of record that petitioner filed a civil suit against Municipal Corporation, Panipat and others for permanent injunction restraining them from interfering in his peaceful possession over the plot and residential house as detailed in the head note of the petition illegally and forcibly by taking several pleas. The defendants filed their respective written statements, controverting the stand of the plaintiff. The learned lower Court framed issues on 30.05.2022 and posted the case for evidence of the petitioner for 14.09.2022.

7. Perusal of the zimini orders Annexure P-8 to P-14 reveal that petitioner failed to lead evidence until 08.11.2023. On that date, petitioner tendered his documents. The learned lower Court took into account that several opportunities, including last opportunity, were afforded to petitioner, but he failed to lead evidence, and even list of witness to be examined on his behalf. As a result, the court closed his evidence and scheduled the case for cross-examination of the plaintiff along with production of documents if any, on his behalf.

8. Given that learned lower Court had adjourn the case for cross-examination of the petitioner and for production of documentary evidence, if any, by him, and had not finally closed the plaintiff's case, I am of the considered view that learned lower Court should not have closed the oral

evidence of the plaintiff, instead should have adjourned the case, imposing significant cost for his entire evidence.

9. In the light of the relief claimed by the petitioner against respondents in the case on hand, denying him the right to contest the relief by way of leading evidence, would result in serious prejudice. Furthermore, it is emphasized that a party should be allowed to contest the matter on merits rather than scuttling their rights on rigid grounds. Deciding a dispute after hearing both the parties is deemed preferable, and a technical approach leading to closure of contesting doors should be avoided, more so, when other party can always be compensated with costs. In the circumstances, when the case of the plaintiff was posted for his cross examination and production of documents, the right to the plaintiff to lead other oral evidence should not have been closed. In this regard, the impugned order does not withstand judicial scrutiny. Furthermore, the counsel for the petitioner undertakes to conclude the evidence in two effective opportunities

10. In circumstances to do complete justice between the parties, this Court deems fit that two effective opportunities be granted to the petitioner to lead his oral evidence as stated above, enabling him to put forth his stand before the Court to the assertions and allegations raised by him against respondents. Accordingly, the Revision Petition is allowed. Impugned order dated 08.11.2023 is set aside, subject to payment of Rs.15,000/- as costs payable by the petitioner to the respondent No.1.

11. Petitioner is directed to appear before learned lower Court on the next date of hearing as fixed by the Court and make the payment of costs and lead evidence as aforementioned.

23.01.2024
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(RITU TAGORE)
JUDGE

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