

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

138 CR-405-2024 (O&M)
Date of decision: 23.01.2024

Dinesh Kumar ...Petitioner

Versus

Suresh Kumar and others ...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Sachin Mittal, Advocate and
Mr. Parth Sharma, Advocate for the petitioner.

VIKAS SURI, J.

1. The petitioner (defendant No.2) through this revision petition under Article 227 of the Constitution of India has challenged order dated 12.01.2024 (Annexure P-1) whereby the evidence of defendant No.2 was closed by Court order.
2. The facts of the case, succinctly, are that respondent No.2/plaintiff-Laxmi Devi filed a suit praying for a decree of symbolic possession by way of specific performance of agreement to sell dated 28.05.2005 of Plot No.429, Sector 6, HUDA, Panipat with consequential relief of permanent injunction. The suit was contested and the proceedings therein continued, wherein the petitioner appeared as DW-5 and was examined in-chief on 03.07.2019. However, his cross-examination was deferred on the request of counsel for respondent No.2/plaintiff and the trial was adjourned for cross-examination of the

petitioner as well as remaining evidence of the defendants. At that stage, an application under Section 66 of the Indian Evidence Act was filed by one of the defendants, which was dismissed vide order dated 25.09.2019. The said order was challenged before this Court by way of revision petition, which was disposed of on the consensus of the parties that defendant No.1 shall be permitted to summon the witness concerned. Accordingly, vide order dated 07.11.2023, after noticing the order passed by this Court, the proceedings were adjourned to 18.11.2023 for defendants evidence. From 18.11.2023 till passing of the impugned order on 12.01.2024, as many as 05 short adjournments have been availed. The trial Court vide order dated 08.01.2024 i.e. one preceding the impugned order, after noticing that petitioner/defendant No.2 had availed several effective opportunities but despite that failed to conclude his evidence, granted one more opportunity for the same. The petitioner was also cautioned of the consequences on failing to conclude his evidence i.e. evidence of defendant No.2 would be deemed to be closed by Court order. The evidence of defendant No.2 was closed by order of the Court on 12.01.2024. Hence, the instant revision challenging the same has been filed by the petitioner.

3. Learned counsel for the petitioner submits that petitioner/defendant No.2 had been examined in-chief on 03.07.2019 and his cross-examination was deferred at the request of counsel for respondent No.2/plaintiff. Thereafter, the cross-examination of the petitioner could not be recorded on account of the pendency of revision petition preferred before this Court impugning order dated 25.09.2019

whereby an application filed under Section 66 of the Indian Evidence Act was dismissed. Thereafter, the proceedings were impacted on account of COVID-19 pandemic. It is further submitted that in the revision petition preferred against the order dated 25.09.2019, the parties were *ad idem* before this Court that the applicant/defendant shall be permitted to summon the witness concerned and the said revision petition was disposed of as such. It is contended on behalf of the petitioner that on account of short dates being granted after 07.11.2023, petitioner was not in a position to conclude his evidence and he was also not cross-examined as such. He thus prayed for grant of one opportunity to the petitioner/defendant No.2 to conclude his entire evidence, including his cross examination and the other side can be compensated with costs. The petitioner also undertakes to present himself for cross-examination, which was deferred at the request of counsel for the plaintiff, on the next date itself before the trial Court. The petitioner would be severely prejudiced in case the petitioner is not granted one effective opportunity to conclude his evidence.

4. Learned counsel for the petitioner has pointed out that the case is now fixed for 29.01.2024 for further proceedings.

5. Heard learned counsel for the petitioner and have perused the impugned order dated 12.01.2024 and material available on record.

6. Without issuing notice to other party as it may not only cause delay but unnecessarily burden the opposite party with the expenses, the present petition is being decided.

7. Learned counsel for the petitioner submits that petitioner/

defendant No.2 having been examined in-chief and cross-examination having been deferred on the request of counsel for the plaintiff and thereafter evidence of the defendant having been closed by order of the Court, the aforesaid evidence in-chief would also be kept out of reckoning. The cross-examination was deferred at the request of counsel for the petitioner and subsequently he was not cross-examined. The trial Court should have considered the said aspect and passed an appropriate order recording the cross-examination as NIL before closing the evidence of the defendants by order. If the examination in-chief of the petitioner is not taken into consideration for the aforementioned reason, it would result in miscarriage of justice.

8. In the present case, the evidence of the petitioner/defendant has been closed by Court order on the ground that one final opportunity was granted to him to conclude his evidence, vide order dated 12.01.2023. On the adjourned date, a request for adjournment by counsel for the petitioner/defendant No.2 who was permitted to enter appearance on the same day substituting the earlier counsel, did not find favour with the Court to grant such request and the evidence of petitioner/defendant No.2 was closed by Court order. The said order does not reflect that defendant No.2, who had been examined in-chief as DW-5, had not come present for his cross-examination. Thus, such an order would be very harsh.

9. It is settled proposition of law that the scope of exercise of judicial discretion is to attain the ends of justice. Procedural law is enacted with the objective of doing substantial justice between the

parties. The petitioner could not produce the witnesses on the dates fixed for evidence and ultimately his evidence was closed by Court order. However, the petitioner remained to be cross-examined by the other side i.e. on behalf of the plaintiff and having failed to do so, the petitioner should not be put to peril. No doubt, the petitioner was granted opportunities but during the said period could not adduce his evidence. There is nothing on record to show as to whether any cost was imposed upon the petitioner for not producing his evidence, though the trial Court had cautioned the petitioner of the consequences that would follow. The order of closing of evidence of a party has far reaching consequences. The Court should normally pass an order of lesser gravity at the first instance, like that of imposition of costs, before passing the order of a kind as has been passed in the present case.

10. In *Joginder Singh and others vs. Smt. Manjit Kaur*, 2000(3) PLR 124, this Court held as under:-

“The inevitable principle that emerges from the aforesaid established principle of law is that the Court must take recourse to the powers vested in the Court under the codified law at the appropriate stage and keeping in view the facts and circumstances of that case. It is true that it will not be possible to formulate a strait-jacket formula but passing of adverse orders against a party in the event of default, at some stage, at least, would be but necessary. In other words, the Court must take recourse to such powers as are essential for achieving the ends of justice. Expeditious disposal of the suit is the very foundation of the amplified procedure prescribed in the Code for conclusion of the suit. May be, a reasonable approach in this regard would, in any case, be highly appreciable.”

In the said case, after having granted last opportunity, then finally costs were imposed for adjourning the case and it was only thereafter that the evidence was closed by Court order. It is well settled that procedural law is meant to advance its cause, and not to obstruct the same.

11. The Apex Court in *State of Punjab and another vs. Shamlal Murari and another*, (1976) 1 SCC 719, held that we must always remember that procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.

12. Keeping in view the above, this Court is of the opinion that the impugned order dated 12.01.2024 (Annexure P-1) passed by the Civil Judge (Sr. Division), Panipat, is not justified in the facts and circumstances of the case. The petitioner/defendant No.2 would be prejudiced if he is not allowed to be cross-examined pursuant to his examination-in-chief as DW5, before passing of the order closing the evidence of defendant No.2 for the reason that despite last opportunity defendant evidence was not concluded. Nonetheless, it ought to have been specifically mentioned whether the petitioner was not cross-examined for his failure to present himself for the said purpose or on account of failure of the other party despite having been given an opportunity to cross-examination, as adverse consequences would flow from such order. It is also settled principle that adequate opportunity

should have been given before passing the drastic order of closing of evidence. The record also does not show that before passing the impugned order, any costs were imposed to put the petitioner on guard.

13. Accordingly, the revision petition is allowed; the order dated 12.01.2024 (Annexure P-1) passed by the Civil Judge (Sr. Divn.) Panipat, is set aside subject to payment of costs of Rs.20,000/-, to be paid to respondent No.2/plaintiff-Laxmi Devi, before the trial Court. The petitioner would present himself for cross-examination on the date fixed before the trial Court or any other date convenient to the said Court. The petitioner shall be given one effective opportunity to conclude his entire evidence.

14. The revision petition is disposed of in the aforesaid terms.

January 23, 2023

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(VIKAS SURI)
JUDGE

Whether speaking/reasoned : Yes / No

Whether Reportable : Yes / No