



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

132

CR-594 of 2024 (O&M)

Decided on: 08.05.2024

Gurnam Singh

...Petitioner

Versus

Angrej Singh and others

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Piyush Setia, Advocate
for the petitioner.

Mr. A. K. Khunger, Advocate
for respondents No.1 to 3.

Respondents No.4 and 5 (proforma respondents).

RITU TAGORE, J.

1. Challenge in the present revision is to the order dated 15.01.2024 (Annexure P-4) passed by learned ACJSD-cum-SDJM, Abohar in a Civil Suit No.781 of 2018 titled as ‘Angrej Singh and others Vs. Gurnam Singh and others’, whereby evidence of the petitioner (defendant No.1 before the learned trial Court), has been closed by Court order.
2. Learned counsel for the petitioner submits that the respondents No.1 to 3 (plaintiffs before the learned trial Court) instituted a civil suit for possession by way of specific performance of agreement to sell dated



23.04.2016 with respect to the land measuring 41 kanals 18 marla as detailed in the order dated 16.08.2019 (Annexure P-5 collectively) and in the alternate sought relief of recovery of money against the petitioner and proforma respondents 4 and 5, on various averments, taken in the plaint.

3. It is stated that upon receiving the notice of the case, petitioner and proforma respondents No.4 and 5 appeared and filed their pleadings. The learned trial Court framed the issues on 16.08.2019 and thereafter posted the case for evidence of the respondents No.1 to 3 for 13.09.2019. It is stated by the learned counsel that contesting respondents No.1 to 3 concluded their evidence on 18.11.2022 and thereafter the learned trial Court scheduled the case for the evidence of the petitioner along with proforma defendants for 18.12.2022.

4. Learned counsel for the petitioner submits that on account of non-appearance of the counsel for the petitioner and proforma respondents, they were proceeded against *ex parte* and the application moved on behalf of the petitioner for setting aside the *ex parte* order was allowed vide the impugned order dated 15.01.2024 (Annexure P-4) but opportunity of leading evidence was arbitrarily closed. Learned counsel has assailed the above order to the limited extent whereby he has been prevented from presenting his evidence.

5. While referring to various *zimini* orders, learned counsel contends that respondents were given liberal opportunities to lead the evidence; whereas inadequate opportunities were given to him to present his evidence. It is urged by the learned counsel that the valuable right of the petitioner has been foreclosed by the learned trial Court, preventing him from defending his case. This order has harshly affected the petitioner,



causing serious prejudice to his rights in the suit. The learned counsel urges that he wants to examine three witnesses namely the petitioner, handwriting expert and one more witness and shall conclude his evidence, thereafter.

6. Contrary to it, learned counsel for the respondents No.1 to 3 defended and supported the order stating that various *zimini* orders would demonstrate the conduct of the petitioner, who has not been diligent in pursuing his case. He was proceeded against *ex parte* twice, however, was allowed to join the proceedings. It is stated that he failed to conclude his evidence despite taking number of opportunities and his right to lead evidence was rightly closed by the learned trial Court. On the above material submissions a prayer is made to dismiss the petition, lacking merits.

7. I have heard learned counsel for the petitioner and have gone through the paper book.

8. After perusing the paper book, it is evident that respondents No.1 to 3 filed a civil suit for possession by way of specific performance against the petitioner and proforma respondents No.4 and 5 with alternate relief of recovery. Various *zimini* orders on record indicate that the petitioner and proforma respondents No. 4 and 5 defaulted in their appearance and thereafter petitioner moved an application seeking to set aside *ex parte* proceedings against him. The said application was allowed and *ex parte* proceedings against him were set aside; but his right to lead evidence was closed by observing that he had already availed number of opportunities vide the impugned order dated 15.01.2024 (Annexure P-4). *Zimni* orders (Annexure P-5 Colly) placed on record reveal that learned trial Court afforded three effective opportunities to the petitioner to present his



evidence and also adjourned the case on their request enabling them to arrive at some settlement but same could not be materialized. The request of the petitioner to permit him to amend his written statement was rejected.

9. It is trite that all rules of procedure are the handmaid of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Although the facts of the case suggest that there has been some inaction and carelessness on the part of the petitioner in not prosecuting the litigation with due diligence, but still, it cannot be suggested that delay has been caused by the petitioner for any malevolent reasons. It is well established that the Court should adopt a liberal approach and rights of the parties should be adjudicated on the merits of the controversy, rather, thwarting the same on rigid technicalities. Furthermore, the counsel on behalf of the petitioner undertakes to conclude his evidence if one opportunity is given. Furthermore, delay can always be rectified or atoned by imposing costs.

10. In these circumstances, to do complete justice between the parties, I believe that one effective opportunity should be granted to the petitioner to conclude his evidence enabling him to put forth his stand before the learned trial Court to the assertions and allegations raised by the respondents No. 1 to 3 (plaintiffs) against him. Accordingly, impugned order dated 15.01.2024 (Annexure P-4) is set aside to the above extent permitting the petitioner (defendant No.1) to tender his evidence, subject to payment of Rs.25,000/- as costs to be paid by him to contesting respondents No. 1 to 3 (plaintiffs).



11. Petitioner is directed to appear before the learned trial Court on the due date of hearing as fixed by the learned Court and tender the costs and present his evidence.
12. It is made clear that in case of default, this order shall stand vacated automatically.
13. Petition stands allowed in above terms.
14. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

08.05.2024
Rimpal

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