

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

123

CR-804-2024 (O&M)

Date of Decision: 15.03.2024

Ramkanwar @ Ram Kumar

...Petitioner

Versus

Sub Divisional Officer and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present:- Mr. Rao Ajender Singh, Advocate,
for the petitioner.

VIKAS SURI, J.

1. The present revision petition has been filed under Article 227 of the Constitution of India, assailing order dated 05.01.2024 passed by the Civil Judge (Junior Division), Bawal, whereby evidence of the plaintiff has been closed by Court order.
2. The facts of the case, briefly stated, are that the petitioner-plaintiff filed a suit for permanent injunction pleading therein that he is owner in possession of land mentioned in the head note of plaint, situated in village Pavti, Tehsil Bawal, District Rewari, as per jamabandi for the year 2012-13. Upon notice, defendants put in appearance and contested the suit. On 07.10.2022, issues were framed and proceedings were deferred for evidence of the plaintiff. On 29.03.2023, plaintiff Ram Kanwar was partly

examined as PW-1 and his cross-examination was deferred at the request of counsel for defendant Nos.3 and 4. The matter was thereafter posted for cross-examination of the said witness as well as plaintiff's evidence. Thereafter, few more opportunities were provided to the plaintiff to adduce evidence at his own responsibility. Vide order dated 08.11.2023, it was recorded that if the plaintiff fails to adduce evidence on the adjourned date of hearing, in that eventuality his evidence shall be deemed to be closed by Court order. However, on 21.11.2023, another opportunity was granted. On 08.12.2023, plaintiff Ram Kanwar was present for his cross-examination but the same was deferred on the request of counsel for defendant Nos.1 and 2. The matter was then posted for 05.01.2024 for cross-examination of the aforesaid witness as well as for remaining evidence of the plaintiff. On the adjourned date i.e. 05.01.2024, PW-1 Ram Kanwar was cross-examined and thereafter, evidence of plaintiff was closed by Court order.

3. Learned counsel for the petitioner submits that the petitioner seeks only one effective opportunity for concluding his entire evidence, at his own responsibility, on the date already fixed. He, however, does not dispute that in spite of availing several opportunities, he could not conclude his evidence. It is further submitted that now the evidence of defendants is going on and examination in chief of one of the defendant's witnesses has been recorded so far. The case is now pending for 20.03.2023 for cross-examination of the said witness (DW).

4. Heard learned counsel for the petitioner and perused the record

with his able assistance.

5. This petition is being disposed of without issuing notice to the other party keeping in view the nature of the order proposed to be passed.

6. The right to lead evidence is pivotal to a fair trial and partakes the character of natural justice and fair play. No doubt, where a party is unacceptably apathetic, the Court may put its foot down and close the right of the party to lead evidence; else, as adversarial litigations are meant to be tried after allowing the parties an adequate opportunity to place their respective stands on record, the Court should not be hyper-technical, in the matter of granting opportunity to lead evidence and the like.

7. No doubt, petitioner was afforded sufficient opportunities to lead his evidence and on many occasions, the Court has cautioned the plaintiff that the adjournment was subject to last opportunity. It is well settled law that exercise of judicial discretion is to attain the aims of justice. Procedural law is enacted with the objective of doing substantial justice between the parties. The plaintiff could not produce the witnesses on the dates fixed for the said purpose and ultimately, his evidence was closed by Court order. Undisputedly, the plaintiff was granted opportunities but could not adduce his evidence during the said period. The order closing evidence of a party has far reaching consequences and the Courts should normally pass an order of lesser gravity at the first instance, like that of imposition of costs. There is nothing on record to show as to whether any costs were imposed upon the petitioner-plaintiff for non production of his evidence

though the trial Court had cautioned the petitioner by recording in *zimni* orders of various dates to be last opportunity as well as, in default, deeming the evidence to be closed by Court order.

8. 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 the cause of justice, and not to obstruct the same.

9. 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.

10. Keeping in view the above, this Court is of the considered opinion that ends of justice would be adequately met if one effective opportunity is granted to the petitioner-plaintiff to lead his entire evidence, at his own responsibility, on the date already fixed before the trial Court. For the inconvenience caused to the other side, the defendant-respondents can be compensated with costs.
11. For the reasons and legal position discussed above, revision petition is allowed and the impugned order dated 05.01.2024 passed by the Civil Judge (Junior Division), Bawal, is set aside subject to payment of costs of Rs.15,000/- to be paid to the respondent-defendants. On payment of costs, the petitioner be allowed one effective opportunity to lead his entire evidence at his own responsibility, on the date fixed before the trial Court or any other date convenient to the said Court.
12. The revision petition is disposed of in the aforesaid terms.
13. All pending applications, if any, stand disposed of.

March 15, 2024

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(VIKAS SURI)
JUDGE

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