

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

114

CR-911-2024 (O&M)

Date of Decision: 19.04.2024

Madan Lal

...Petitioner

Versus

Chaman Lal

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present:- Mr. Harjot Singh Bedi, Advocate, for the petitioner.

VIKAS SURI, J. (ORAL)

CM-6503-2024

This application for placing on record, supported by affidavit, is allowed for the reasons mentioned therein. Annexures P-14 and P-15 are taken on record subject to just exceptions.

CM stands disposed of.

CR-911-2024

1. The petitioner has filed the present revision petition under Article 227 of the Constitution of India, for setting aside order dated 21.09.2023 (Annexure P-9) passed by the Civil Judge (Junior Division), Sri Anandpur Sahib, whereby evidence of the plaintiff was closed by Court order.
2. The facts, in brief, necessary to be noticed for the *lis* in the present case are that the petitioner-plaintiff had instituted a suit for recovery of Rs.75,000/- on the basis of pronote and receipt dated 19.04.2017, along

with interest at the rate of 12% per annum. On notice, respondent-defendant put in appearance and opposed the suit by filing written statement. Thereafter, issues were framed and the proceedings were deferred for plaintiff evidence. The plaintiff was examined-in-chief on 15.10.2022 as PW-1 and his cross-examination was deferred on the request of counsel for the defendant. Thereafter, the plaintiff examined another witness as PW-2 on 28.02.2023 and the matter was adjourned for cross-examination of both the witnesses i.e. PW-1 and PW-2. On 13.04.2023, examination of PW-2 was completed including his cross-examination and the matter was deferred for cross-examination of PW-1. On 25.05.2023, the case was adjourned for cross-examination of PW-1, subject to last opportunity and costs. On the adjourned date i.e. 05.08.2023, a request for adjournment was made on behalf of the plaintiff, which was granted subject to last opportunity and imposition of further costs, which were to be deposited with the District Legal Services Authority. On 21.09.2023, the evidence of the plaintiff was closed by Court order after noticing that the plaintiff has already availed number of opportunities to conclude his evidence but he failed to do so. It was noticed that the previous costs had not been paid and it was ordered that the same be deposited with the District Legal Services Authority (DLSA). Thereafter, the petitioner-plaintiff filed an application for allowing him to appear for cross-examination and to tender the affidavit of Arvind Kumar, Deed Writer, as PW-3 and to recall the order dated 21.09.2023. The said application was opposed by the defendant by filing reply and the same was dismissed as being not maintainable vide order dated 20.01.2024 (Annexure P-13).

3. Learned counsel for the petitioner submits that absence of the plaintiff on 21.09.2023 was for reasons beyond his control, as his father in-law, namely Darshan Kumar, was critically ill and hospitalized and unfortunately passed away on the very next day i.e. 22.09.2023. The death certificate of Darshan Kumar has been appended with the revision petition as Annexure P-10. It is further submitted that the costs as assessed by the trial Court have since been deposited against receipt (Annexure P-15).

4. In the aforementioned background learned counsel contends that the petitioner-plaintiff remains to be cross-examined, besides one more witness has to be produced and that the petitioner would conclude his entire evidence at own risk and responsibility, if one effective opportunity is granted.

5. Heard learned counsel for the petitioner and perused the record with his assistance.

6. 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 and as it may not only delay the proceedings but unnecessarily burden the opposite party with expenses.

7. 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.

8. Undisputedly, petitioner was afforded sufficient opportunities to lead his evidence and on many occasions, the Court cautioned the petitioner-plaintiff that the adjournment was subject to last opportunity. A perusal of the background noticed above does not reveal any infirmity with the impugned order. However, the reason for absence of the petitioner-plaintiff on 21.09.2023 has not been considered while passing the impugned order. 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 petitioner-plaintiff could not be present on the dates fixed for his cross-examination and ultimately, his evidence was closed by Court order. The order closing evidence of a party has far reaching consequences.

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 handmaids of justice and not the mistress; a lubricant, not a resistant in the administration of justice.

10. Keeping in view the above and taking into account that the petitioner-plaintiff is to be cross-examined and is to lead evidence through one more witness only, this Court is of the considered view that ends of justice would be adequately met if one more effective opportunity is granted to the petitioner-plaintiff to lead his entire evidence, at his own risk and responsibility, on the date already fixed. For the inconvenience caused to

the other side, the respondent-defendant can be compensated with costs.

11. Resultantly, the revision petition is disposed of by setting aside the impugned order dated 21.09.2023 (Annexure P-9) passed by the Civil Judge (Junior Division), Sri Anandpur Sahib and directing grant of one effective opportunity to the petitioner-plaintiff to adduce his entire evidence including ensuring his presence for cross-examination, subject to payment of costs of Rs.5,000/- to the respondent-defendant, on the aforesaid date or any other date convenient to the trial Court. If the respondent-defendant has already examined any witness in his evidence, he would also be granted an effective opportunity to re-examine such defendant witnesses.
12. The revision petition is disposed of in the aforesaid terms.
13. Pending applications, if any, also stand disposed of.

April 19, 2024

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(VIKAS SURI)
JUDGE

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