



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
108**

CR-597-2021 (O&M)

Date of decision: 26.09.2024

SUNIL KUMARI AND OTHERS

.....PETITIONERS

Versus

SUNIL KUMAR AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present: Ms. Amandeep Kaur, Advocate,
for Mr. Karan Singh, Advocate,
for the petitioners.

Mr. Dinesh Arora, Advocate,
for the respondents.

RITU TAGORE, J. (ORAL)

1. This revision is directed against the order dated 28.01.2021 (Annexure P-1), whereby the evidence of the petitioners/defendants was closed by Court order in Civil Suit No. 343 of 2016 titled as 'Sunil Kumar vs. Sunil Kumari and others'.

2. Learned counsel representing the petitioners, submits that no effective and proper opportunity was given to the petitioners/defendants No. 1 to 3 to lead their evidence. In support of his arguments, refers to various *zimini* orders and further contends that due to the spread of COVID pandemic, the petitioners were unable to present their evidence. It is further stated that, in the absence of their evidence, the petitioners would suffer prejudice as they would be prevented from presenting their version of the matter in controversy. It is stated by the learned counsel that one effective opportunity may be granted to the



petitioners to conclude their evidence. A prayer is made to allow the present revision petition by setting aside the impugned order.

3. On the contrary, learned counsel for the respondent No. 1/plaintiff contends that the petitioners should be burdened with costs for delaying the proceedings in the case.

4. It is a matter of record that respondent No. 1 instituted a suit for mandatory and permanent injunction against the petitioners/defendants. Various *zimini* orders placed on record indicate that respondent No. 1/plaintiff had already concluded his evidence, and petitioners/defendants, despite being given numerous opportunities, failed to conclude their evidence. Learned trial Court in the impugned order, detailed the opportunities afforded to the petitioners to lead their evidence.

5. Thus, from the record it is explicit that the petitioners were not diligent in pursuing their case. However, no *mala fide* reasons can be attributed to them for not presenting their evidence as directed by the learned trial Court, although from the record, they seem to be negligent in pursuing their case.

6. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. It is well established that the Court should adopt a liberal approach, and rights of the parties should be adjudicated on merits of the controversy, rather than thwarting the same on rigid technicalities. Furthermore, the counsel on behalf of the petitioner undertakes to conclude the evidence at one opportunity. Keeping in view the above and further that the delay can always be rectified by imposing costs. In these circumstances, to do complete justice between the parties, I believe that one effective opportunity should be granted to the petitioners to conclude their evidence, thereby enabling them to put forth their stand.



7. Accordingly, impugned order dated 28.01.2021 (Annexure P-1) is set aside, subject to payment of Rs.3,000/- as costs payable by the petitioners/defendants No. 1 to 3 to respondent No. 1/plaintiff, permitting the petitioners to lead their evidence at their own responsibility.
8. Petitioners are directed to appear before the learned trial Court on the due date of hearing as fixed before it and the petitioners shall present their evidence and tender costs. The learned trial Court shall grant one effective opportunity to the petitioners to present their evidence by considering the convenience of the counsel for the parties and its own board.
9. It is made clear that in case of default, this order shall automatically be vacated.
10. Pending applications, if any, also stand disposed of accordingly.

September 26, 2024

pj

**(RITU TAGORE)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No