

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

138

CR-1111-2024

Date of Decision: 27.02.2024

Prem Lata

...Petitioner

Versus

Avtar Dhaliwal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present:- Mr. Jai Bhagwan, Advocate,
for the petitioner.

VIKAS SURI, J.

1. The petitioner-defendant, through the present revision petition filed under Article 227 of the Constitution of India, assails order dated 31.01.2024 (Annexure P-3) passed by the Civil Judge (Junior Division), Malerkotla, whereby the evidence of defendant has been closed by Court order except her cross-examination as DW.
2. The facts of the case in brief are that the respondent-plaintiffs have filed a suit for declaration *inter alia* to the effect that being class-I heirs, they are joint owners of land measuring 8 kanal and one house out of the land measuring 49 kanal 2 marla, 1 kanal 9 marla, 19 kanal 4 marla and 6 kanal 16 marla, situated at village Dasounda Singh Wala, Tehsil Ahmedgarh, as per *jamabandi* for the year 2015-16 and the revenue record is liable to be rectified in this regard. The respondent-plaintiffs closed their

evidence on 20.07.2023 and the proceedings were deferred to 05.09.2023 for defendant's evidence. On 31.01.2024, the petitioner-defendant tendered her affidavit as examination in-chief and her cross-examination was deferred on the request of counsel for the plaintiffs but on the same date, the defendant's evidence was closed by order of the Court except her cross-examination and she was bound-down for 12.02.2024.

3. Learned counsel for the petitioner submits that the petitioner-defendant Prem Lata (DW) was not cross-examined on the adjourned date as counsel for the plaintiffs had requested for an adjournment to cross-examine the said witness. The proceedings are now pending for 28.02.2024.

4. Learned counsel for the petitioner contends that though it has been recorded in the impugned order that the defendant had availed 12 effective opportunities to conclude her evidence but despite the same, failed to do so. However, referring to various interlocutory orders passed by the trial Court, he invited notice of the Court to the fact that out of 12 hearings, 04 adjournments were granted by the Court that would be non-effective in nature because on two hearings, Bar Association, Malerkotla had declared 'no work' and on two instances, the mother of the counsel for the petitioner-defendant was admitted in hospital. The petitioner prays for grant of one effective opportunity for concluding her entire evidence at her own risk and responsibility on the date already fixed, for which date she has been bound down for her cross-examination.

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. No doubt, petitioner was afforded sufficient opportunities to lead her evidence and on many occasions, the Court has cautioned the petitioner-defendant 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 petitioner-defendant could not produce the witnesses on the dates fixed for the said purpose and ultimately, her evidence was closed by Court order. Undisputedly, the petitioner-defendant was granted opportunities but could not adduce her 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-defendant for non production of her evidence though the trial Court had cautioned the petitioner by recording in *zimni* orders of various dates to be last opportunity.

9. 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.

10. 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.

11. It may also be noticed here that while closing the evidence of the petitioner-defendant vide impugned order dated 31.01.2024, the proceedings were being deferred at the request of counsel for the plaintiffs for cross-examination of the petitioner-defendant. Therefore, the defendant evidence ought not to have been closed on the same date. While adjourning the case at the request of counsel for the plaintiffs, if the defendant's evidence would have not been closed by order of the Court and one more opportunity would have been granted to the defendant, the same would not have prejudiced either party. Such an order passed by the trial Court, on the face of it, appears to be arbitrary and is not sustainable.

12. Keeping in view the above, this Court is of the considered opinion that ends of justice would be adequately met if one more effective opportunity is granted to the petitioner-defendant to lead her entire evidence, at her own risk and responsibility, on the date already fixed for her cross-examination. For the inconvenience caused to the other side, the plaintiff-respondents can be compensated with costs.

13. Resultantly, for the reasons and legal position discussed above, revision petition is allowed; the impugned order dated 31.01.2024 (Annexure P-3) passed by the Civil Judge (Junior Division), Malerkotla, is modified to the aforesaid extent subject to payment of costs of Rs.15,000/- to be paid to the respondent-plaintiffs, i.e. Rs.5,000/- each, before the trial Court. The petitioner-defendant already stands bound down for her cross-examination for the date fixed before the trial Court. The petitioner shall be

given one effective opportunity to conclude her entire evidence on the aforesaid date or any other date convenient to the said Court.

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

February 27, 2024

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(VIKAS SURI)
JUDGE

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