

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

118

CR-1860-2024 (O&M)
Date of Decision: 01.05.2024

Jatinder Malik and another
...Petitioners

Versus

Amarjeet Kaur and another
...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present:- Mr. Ritesh Tomar, Advocate,
for the petitioners.

VIKAS SURI, J.

1. This revision petition under Article 227 of the Constitution of India has been filed by the plaintiff-petitioners challenging order dated 05.02.2024 passed by the learned Civil Judge (Junior Division), Ludhiana, whereby, plaintiffs' evidence has been closed by Court order.
- 2.1 Learned counsel for the petitioners submitted that the plaintiff-petitioners had filed a suit under Section 6 of Specific Relief Act, for recovery of possession of part of the property in dispute i.e. ground floor of property No.622, Dashmesh Nagar, Gali No.3, Ludhiana and for direction to the defendants to hand-over vacant and peaceful possession to them and for passing a decree of permanent injunction against the defendants.
- 2.2 Upon notice, written statement was filed by the defendants opposing the suit. The issues were framed on 06.12.2016 and the matter has been pending at the stage of plaintiffs' evidence upto passing of the

impugned order.

2.3 The learned Civil Judge (Junior Division), Ludhiana, noticed in its order dated 31.10.2023 that the present case pertains to the year 2016 and falls under action plan category. In view of the same, short adjournments were given in this case. On the aforesaid hearing, PW-1 Paramvir Singh was present for his cross-examination, which was deferred on the ground that the counsel for the defendants was abroad, at this request the matter was adjourned to 07.11.2023. On the adjourned date, PW-2 Parampreet Singh was examined and the matter was adjourned to 20.11.2023. The trial proceeded by accommodating the parties to multiple hearings in a month i.e. three hearings each in the months of November and December, 2023 and eight hearings in the month of January, 2024, before passing the impugned order on 05.02.2024.

2.4 On 25.01.2024, plaintiff had suffered a statement in the Court that he will conclude his evidence on the next date of hearing i.e. 29.01.2024. On the next hearing, Retd. ASI Jagir Singh was examined as PW-2 and another witness Harbans Singh (PW-4) had tendered his affidavit in examination-in-chief as Ex.PW-4/AZ along with other documents and a copy thereof was supplied to the other side in court. The said witness (PW-4) was bound down for 31.01.2024 for his cross-examination and for remaining evidence of the plaintiffs subject to last opportunity.

2.5 On 31.01.2024, the case was further adjourned for the same purpose. It was recorded in the *zimini* order of the said date that if the plaintiffs failed to conclude their evidence on the next date of hearing, then no other option would remain for the Court but to close the plaintiffs'

evidence by Court order. On the adjourned date, i.e. 05.02.2024, after noticing that the issues were framed on 06.12.2016, plaintiffs themselves had suffered a statement on 25.01.2024 for concluding their evidence on the next date of hearing and having availed more than 30 opportunities, their evidence was closed by Court order.

3. It is pleaded on behalf of the plaintiff-petitioners that Harbans Lal son of Bishan Dass was not well and had gone to the doctor on 05.02.2024. His medical record of the said date has been appended with the present revision petition, as Annexure P-8. It is further pleaded in the present revision petition that the aforesaid witness had come present before the trial Court at 2 O'clock but before that, the impugned order dated 05.02.2024 (Annexure P-7), closing the evidence of the plaintiff-petitioners, had already been passed. Learned counsel for the petitioners submits that the trial is now pending for today and only one defendants' witness has been examined completely till now, whereas one witness DW-2 Kuldeep Singh has been bound down for his cross-examination. In the aforesaid facts and circumstances, petitioners seek only one opportunity to present witness PW-4 for completion of his cross-examination, being a material witness to the case. The absence of witness before lunch break has been duly explained and the same was for bonafide reasons, which were beyond his control. It is further submitted that it is not the case that the said witness was absent for the whole day. It is, however, evident from record that the learned trial Court could not be apprised of the difficulty of the said witness, which had been informed to the counsel in the morning itself. The petitioners would not be advantaged by non-examination of the said witness. On the contrary, in

case his cross-examination is not completed, they would be prejudiced in the case.

4. I have heard learned counsel for the petitioners and have gone through the record.

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

6. From the record, it emanates that the suit in question pertains to the year 2016 and the issues were framed on 06.12.2016. Prior to 31.10.2023 the trial Court had noticed that the case falls under action plan category and till then, only one plaintiffs' witness has been examined-in-chief. Though the said witness was present for his cross-examination but the same could not be recorded on the said date on account of absence of defendants' counsel. Thereafter, the proceedings have progressed on a week to fortnight basis and the plaintiff-petitioner had also suffered a statement on 25.01.2024 to conclude his evidence on the next hearing. However, on 29.01.2024, one plaintiff witness was completely examined, whereas PW-4 Harbans Singh was only examined-in-chief by tendering his affidavit along with other documents and was bound down for his cross-examination. It is not disputed that on the adjourned date, the said plaintiff-witness was not present and the case was adjourned to 05.02.2024, on which date the impugned order was passed, closing evidence of plaintiffs by Court order. The trial Court has passed the impugned order after noticing the ratio of the judgment by the Apex Court in *Shiv Contes vs. Tirgun Autoplast P. Ltd.*

and others, (2011) 9 SCC 678.

7. Though this Court finds that there is no infirmity in the impugned order, yet it will be appropriate and in the interest of justice if one effective opportunity is afforded to the plaintiff-petitioners to present PW-4 Harbans Singh for his cross-examination, because if the plaintiffs are not allowed the said opportunity, it will adversely affect their case as the said witness is stated to be a material witness. The trial was still at defendants' evidence stage and only one defendant witness had been completely examined when the petitioners approached this Court by way of the instant petition. It has been submitted on behalf of the petitioners that they will not seek an adjournment for availing the opportunity for producing the aforesaid witness for his cross-examination and undertake to present him on the next date of hearing itself. Otherwise also, the rules of procedure are handmaid of justice and their objective is to advance the cause of justice. The defendants can be compensated by costs.

8. In view of the above discussion, the present petition stands allowed, modifying the impugned order dated 05.02.2024 (Annexure P-7) while directing the trial Court to grant one effective opportunity to the plaintiff-petitioners to present PW-4 Harbans Singh for his cross-examination, on the next date fixed before the trial Court, subject to costs of Rs.10,000/- to be paid to the defendants. Liberty is also granted to the defendants to avail one effective opportunity to examine/re-examine their witness, thereafter.

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

10. Pending applications, if any, also stand disposed of.

May 01, 2024
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(VIKAS SURI)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No