

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

114**CR-1726-2024 (O&M)****Decided on: 05.04.2024****Davinder Singh****...Petitioner****Versus****Dharampal Singh and others****...Respondents****CORAM: HON'BLE MRS JUSTICE RITU TAGORE**

Present: Mr. Sherry K. Singla, Advocate
for the petitioner.

RITU TAGORE, J.

1. Challenge in the present revision petition is to the order dated 09.10.2023 (Annexure P-3) and order dated 12.02.2024 (Annexure P-5), passed by learned Civil Judge (Junior Division) Patiala, in a Civil Suit No.393 of 2019 titled 'Davinder Singh Vs. Dharampal Singh and others' vide which the evidence of the petitioner (plaintiff before the learned trial Court) was closed by the Court order and application under Section 151 CPC for recalling the order was dismissed.
2. Considering the limited prayer made in this revision petition, notice to respondents is dispensed with, at this stage.
3. Learned counsel submits that the petitioner instituted a civil suit against the respondents for separate possession by way of partition of the properties as detailed in the head note of the plaint with further relief of permanent injunction restraining the respondents/agents etc. from alienating, mortgaging, transferring any specific portion or making any alteration,

addition or changing the nature of the suit property, on various averments taken in the plaint (Annexure P-1).

4. It is stated that upon receiving the notice of the case, respondents appeared in the aforementioned suit and contested the same by filing their written statement, raising several pleas. While referring to various *zimini* orders, learned counsel submits that on certain scheduled hearing dates, the witnesses of the petitioner were present but could not be examined on account of the request from the learned counsel for the respondents.

5. The learned counsel urges that the petitioner was/is always ready and willing to tender the costs as imposed upon him, however, due to miscommunication he could not tender the same. It is stated that the petitioner intends to examine architect Chanan Singh and one witness from water and supply department to prove the assertions made in the plaint. The learned counsel contends that the order to close the evidence has seriously prejudiced to the petitioner's right in the suit, as he has been prevented from presenting his case. The learned counsel urges that if the petitioner is given one effective opportunity, he shall conclude the evidence on his own responsibility.

6. I have heard learned counsel for the petitioner and have gone through the paper book.

7. After perusing the paper book, it is a matter of record that the plaintiff instituted a civil suit for separate possession by way of partition against respondents, who are litigating the same. After perusing several *zimini* orders including the impugned order dated 09.10.2023 (Annexure P-3), it is evident that on certain schedule dates of hearing, the evidence on behalf of petitioner was present, while on certain other dates of hearing, the

evidence on behalf of the petitioner was not present. The *zimini* order dated 12.02.2024 reveals that the petitioner also filed an application to recall the order closing his evidence suggesting his willingness to lead his evidence and readiness to pay the costs imposed upon him.

8. In circumstances, in order to ensure complete justice between the parties, I believe that one effective opportunity be granted to the petitioner to lead his evidence at his own responsibility, enabling him to put forth his stand before the learned trial Court. However, the delays can always be atoned by imposing costs. Accordingly, impugned orders dated 09.10.2023 (Annexure P-3) and order dated 12.02.2024 (Annexure P-5) are set aside, subject to payment of Rs.15,000/- as costs by the petitioner to respondents (defendants).

9. Petitioner is directed to appear before the learned trial Court on due date of hearing as fixed by the learned trial Court and tender the costs and produce his witnesses as allowed.

10. It is made clear that in case of default, this order shall automatically stands vacated.

11. Respondents if not satisfied with this order, may move an application for recalling of this order within 30 days.

12. In terms of the above directions, this petition stand disposed of.

13. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

05.04.2024
Rimpal

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