

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CR-1906-2024 (O&M)
Decided on: 01.04.2024

M/s Kolumbus Infrabuild Private Limited

...Petitioner

Versus

Rajvati

...Respondent

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Ankur Dua, Advocate
for the petitioner.

RITU TAGORE, J.

1. Challenge in the present revision is to the order dated 07.03.2024 (Annexure P-1) passed by Civil Judge (Junior Division) Bahadurgarh (wrongly mentioned as Judicial Magistrate First Class) in a case No.CS-277-2022 titled as ‘M/s Kolumbus Infrabuld Pvt. Ltd. Vs. Smt. Rajvati’, whereby the evidence of the petitioner (plaintiff before the learned trial Court), has been closed by Court order.
2. Learned counsel submits that the petitioner filed a civil suit for specific performance with consequential relief of permanent/mandatory injunction against the respondent to enforce the agreement to sell dated 07.09.2021. Upon appearance of respondent and filing of written statement by her, the case proceeded on various dates for petitioner’s evidence. While referring to various *zimini* orders, learned counsel submits that on certain scheduled hearing dates, the witnesses of the petitioner were present but the

cross-examination of witnesses was deferred at the request of the learned counsel for the defendant. Therefore, learned counsel contends that observation of the learned Court that petitioner availed seven opportunities is factually incorrect. However, learned counsel acknowledged that on certain dates of hearing evidence on behalf of petitioner was not present, and due to miscommunication between the counsel and the witnesses regarding the next date of hearing, the witnesses could not appear on scheduled date of hearing i.e. 07.03.2024 leading to closure of evidence of the petitioner.

3. Learned counsel submits that the right of the petitioner to lead evidence has been closed by Court order (Annexure P-1). It is urged that the order of closing the evidence has caused serious prejudice to the rights of the petitioner in the suit. The learned counsel urges that if the petitioner is given two opportunities, it shall conclude the evidence.

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

5. Considering the limited prayer made in this revision, notice to respondent is dispensed with.

6. After reviewing several *zimini* orders including the impugned order dated 07.03.2024 (Annexure P-1), it appears that on certain schedule dates of hearing, the petitioner failed to bring the evidence. The *zimini* order dated 14.12.2023 shows that on that day, the petitioner had brought four witnesses to be examined on its behalf, but due to sickness of counsel for the defendant, an adjournment was granted. Some of the *zimni* orders indicate that the petitioner failed to present the evidence on certain dates, which eventually led to the closure of evidence. The learned counsel undertakes to conclude the evidence, if two opportunities are provided to him.

7. Although, I find that there has been inaction on the part of petitioner in not prosecuting the litigation with due diligence, but still it can not be suggested that delay has been caused by the petitioner for any *mala fide* reasons. It is well established that the Court should adopt a liberal approach and rights of the parties should be adjudicated on the merits of the controversy rather thwarting the same on rigid technicalities. Furthermore, the counsel on behalf of the petitioner undertakes to conclude the evidence in two opportunities. The delay can always be atoned by imposing costs.
8. In circumstances, to do complete justice between the parties, I believe that two opportunities should be granted to the petitioner to conclude the evidence. Accordingly, impugned order dated 07.03.2024 (Annexure P-1) is set aside, subject to the petitioner (revisionist) paying Rs.10,000/- as costs to respondent.
9. Petitioner is directed to appear before learned trial Court on the due date of hearing as fixed by the Court and learned trial Court shall provide the petitioner two effective opportunities to conclude the evidence, taking into account the convenience of the opposing party and the Court’s own workload.
10. It is made clear that in case of default, this order shall stand automatically vacated.
11. Respondent if not satisfied with this order, may move an application for recalling of this order within 30 days.
12. Accordingly, revision petition is allowed in above terms.
13. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

01.04.2024
Rimpal

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