

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

134

CR-2370-2024 (O&M)
Date of decision: 22.04.2024

Ravinder Singh and others

...Petitioners

Versus

Bakshish Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Vipin Mahajan, Advocate for the petitioners.

VIKAS SURI, J.

1. This is a revision petition under Article 227 of the Constitution of India seeking setting aside of the order dated 23.01.2024 (Annexure P-6), passed by learned Civil Judge (Jr. Divn.), Gurdaspur dismissing the application for recall of order dated 24.08.2023, whereby the evidence of the plaintiffs was closed by order of the Court, and for setting aside the aforesaid order dated 24.08.2023 (Annexure P-3).

2. Proceedings are now pending before the trial Court for 23.04.2024 and it is stated that after passing of the impugned order, no defendants witness has been examined till date.

3. Learned counsel for the petitioners submits that issues in this case were framed vide order dated 01.08.2019 and thereafter, the case was adjourned for evidence of the plaintiffs. However, the proceedings were impacted by the global COVID-19 pandemic and were thereafter, taken up for hearing on 16.01.2021 but were deferred to 12.03.2021. Prior to the said date, the case was taken up on 10.03.2021

as the learned Presiding Officer was to proceed on casual leave and accordingly, the proceedings were deferred to 20.04.2021. By the said date, the record of the case had been requisitioned by the first appellate Court in proceeding arising from the order passed on the application under Order 39 Rules 1 & 2 CPC and for awaiting the same, the proceedings before the trial Court kept getting deferred on numerous occasions. The case file was received back from the first appellate Court on 18.07.2022, as recorded in the interlocutory order of the said date and the examination in-chief of Jaswinder Singh (PW-1) was recorded on the said date. The cross-examination of the said witness was deferred at the request of counsel for the defendants. On the following two hearings, the Advocates were abstaining from work and as such, the proceedings were further deferred to 06.01.2023, on which date PW-1 Jaswinder Singh was present for his cross-examination but a request was made for an adjournment on behalf of counsel for the defendants. The proceedings were thus, deferred to 02.03.2023, on which date the aforesaid witness failed to come present for his cross-examination and the proceedings were further deferred to 20.04.2023. On the adjourned hearing, at the request of counsel for the plaintiffs, the case was further adjourned, which was allowed subject to payment of costs assessed by the trial Court. Costs stand paid. PW-1 Jaswinder Singh was cross examined on 18.05.2023 and the case was further adjourned to 13.07.2023. On the said hearing, PW-2 Fateh Singh was examined-in-chief by way of affidavit and his cross-examination was deferred at the request of counsel for the defendants. The cross-examination was deferred to

24.08.2023, as well as for remaining evidence at own responsibility. On 24.08.2023, the trial Court after noticing that the plaintiffs have availed sufficient effective opportunities to conclude the entire evidence but failed to do so, closed the evidence of the plaintiffs by Court order. Aggrieved by the said order, the petitioner-plaintiffs moved an application seeking recall of the said order, which was dismissed vide order dated 23.01.2024. The petitioner assails both the aforesaid orders in the present petition.

4. In the afore-mentioned background, learned counsel contends that PW-2 Fateh Singh remains to be cross examined, besides him one more witness has to be examined and that the petitioners would conclude their entire evidence at own responsibility, if one effective opportunity is granted.

5. Heard learned counsel for the petitioners and perused the record with his assistance.

6. For the reasons as are mentioned herein, the main petition is taken up for final disposal without issuance of notice to the other party, as on doing so, it may not only cause delay but unnecessarily burden the opposite party with expenses to cause appearance in the present petition.

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. A perusal of the record shows that the petitioners were afforded sufficient opportunities to lead their evidence and on one occasion had also assessed costs for seeking adjournment for adducing remaining evidence. It is not disputed that examination-in-chief of PW-2 Fateh Singh was recorded on 13.07.2023 and the case was adjourned to 28.08.2023, for his cross-examination. The petitioners' witness PW-2 Fateh Singh did not come present for his cross-examination on the adjourned hearing, the evidence of the petitioner-plaintiffs was closed by Court order. Perusal of the background noticed above does not reveal any infirmity with the impugned order. It is also not disputed that after passing of the impugned orders dated 24.08.2023 and 23.01.2024, despite the proceedings having been deferred on many occasions, the respondent-defendants failed to adduce their evidence. Procedural law is enacted with the objective of doing substantial justice between the parties. The order closing evidence of a party has far reaching consequences.

9. 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 handmaids of justice and not the

mistress; a lubricant, not a resistant in the administration of justice.

10. Keeping in view the above and taking into account that PW-2 Fateh Singh is to be cross examined and the petitioner-plaintiffs have to examine one more witness only, I am of the considered view that ends of justice would be adequately met if one more effective opportunity is granted to the petitioner-plaintiffs to lead their entire evidence at own responsibility, on the date already fixed. For the inconvenience caused to the other side, the respondent-defendants can be compensated with costs.

11. In the light of the above, the present revision petition is disposed of with a direction to the Court below to grant one effective opportunity to the petitioner-plaintiffs to adduce their entire evidence including ensuring presence of PW-2 Fateh Singh for his cross-examination, subject to payment of costs of Rs.10,000/- to the respondent-defendants, on the aforesaid date or any other date convenient to the trial Court.

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

April 22, 2024

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(VIKAS SURI)
JUDGE

Whether speaking/reasoned : Yes / No

Whether Reportable : Yes / No