



IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

136

CR-3889-2024 (O&M)  
Decided on: 24.07.2024

VARINDER KUMAR

...Petitioner

Versus

JOSHEEL MOHAN

...Respondent

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Mohit Vashishat, Advocate  
for the petitioner.  
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RITU TAGORE, J.

1. This revision under Article 227 of the Constitution of India is directed against the order dated 09.11.2023 (Annexure P-2) passed by learned Civil Judge (Junior Division), SAS Nagar in Civil Suit No.524 of 2021 titled 'Josheel Mohan Vs. Varinder Kumar etc'.
2. Learned counsel submits that respondent, who is the real brother of the petitioner, has instituted a civil suit (Annexure P-1) for mandatory injunction and for recovery of damages against the petitioner, which is pending adjudication before the learned trial Court.
3. It is stated that on 09.11.2023, the case was scheduled for cross-examination of PW-1, Josheel Mohan and PW-2, Sohan Lal Jindal on behalf of the petitioner. However, the counsel for the petitioner did not attend the Court due to his indisposed health. The clerk of the petitioner's counsel appeared and sought an adjournment, but it was not granted. Instead, the



learned trial Court in arbitrary manner, closed the right of the petitioner to cross-examination the witnesses. It is stated that an application under Order 18 Rule 17 read with 151 CPC (Annexure P-3), moved by the petitioner to recall the witnesses for cross-examination, was withdrawn by the petitioner, as it was not the proper remedy under the provision. Learned counsel submits that the order is harsh upon him. If the witnesses are not allowed to be cross-examined, the petitioner will suffer irreparable loss, as the petitioner would be deprived of presenting his version before the Court and countering the respondent's stand. It is stated that it is necessary to recall the witnesses (PW-1 and PW-2) for cross-examination to secure the ends of justice, equity and fair play. A prayer is made to set aside.

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

5. It is a matter of record, that respondent has filed Civil Suit No.524 of 2021 titled 'Josheel Mohan Vs. Varinder Kumar etc.' for mandatory injunction for a mandate against petitioner/defendant, to vacate and hand over the vacant physical possession of top floor of house No.290 Phase 7 Mohali and putting the respondent in possession thereof and recovery of damages at the rate Rs.25,000/- per month from the date of filing of the suit till delivery of possession alongwith 12% interest per annum. From the perusal of the impugned order (Annexure P-2) it is explicit that petitioner in this case had earlier proceeded *ex parte* but was allowed to join the proceedings. This reflects that petitioner has not been diligent in pursuing his case. Still further, on the due date of hearing, when two witnesses of the respondent were present, the counsel for the petitioner did not appear to conduct cross-examination of witnesses, who remained present



in the Court from 10 a.m till 3:20 p.m. As evident from the order (Annexure P-2), the clerk of the counsel for the petitioner, neither paid the previous cost nor pleaded about the indisposed health of the petitioner's counsel as a reason for an adjournment, as now has been pleaded in the grounds of revision. Neither any affidavit of the learned counsel for the petitioner nor his medical prescription has been placed on record to support his version. The facts gathered from the record indicate that the petitioner is not pursuing his case carefully and diligently. However, the counsel for the petitioner undertakes to conclude the cross-examination of the witnesses if given one effective opportunity.

6. It is well established principle of law that the rights of the parties should be adjudicated on the merits of the controversy, rather than being scuttled by rigid technicalities. Furthermore, it is also an established practice of law that the delay can always be condoned by imposing costs. Although I find that the petitioner has been negligent in defending the litigation with due diligence but still, the interest of justice demands that he should be given one opportunity to plead his case.

7. In circumstances to do complete justice between the parties and the delay which has occasioned because of the negligent conduct of the petitioner in pursuing his case, I believe that an effective opportunity be granted to the petitioner to cross examine the witnesses (PW-1 and PW-2). Accordingly, impugned order dated 09.11.2023 (Annexure P-2) is set aside, subject to payment of Rs.25,000/- as costs payable by the petitioner to respondent (plaintiff).

8. Petitioner is directed to put his appearance before learned trial Court on the due date of hearing as fixed by the learned trial Court and make



required payment of costs as indicated above and the costs imposed by the learned trial Court. The learned trial Court shall provide the petitioner with one effective opportunity to cross-examine the witnesses (PW-1 and PW-2) on the due date of hearing or any other date convenient to the opposing party and the Court’s own workload.

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

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

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

(RITU TAGORE)  
JUDGE

24.07.2024  
Rimpal

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