



IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

136

CR-4235 of 2024 (O&M)  
Decided on: 01.08.2024

Gita Badhwar and another

...Petitioners

Versus

Rajeev Ranjan Sinha

...Respondent

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Ish Puneet Singh, Advocate  
for the petitioners.  
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RITU TAGORE, J.

1. This revision is directed against the order dated 21.03.2024 (Annexure P-1) passed in Civil Suit No.172 of 2017 titled as ‘Rajeev Ranjan Sinha Vs. Gita Badhwar and another’ vide which evidence of the petitioners-defendants, has been closed by the Court order.
2. Considering the limited prayer made in this revision, notice to respondent is dispensed with at this stage.
3. Learned counsel for the petitioners submits that respondent-plaintiff filed a suit for recovery (Annexure P-2) against the petitioners, who contested the suit by filing their written statement (Annexure P-3). It is stated that matter was listed before the learned trial Court for petitioners’ evidence on 21.03.2024 and the petitioner No.2 (defendant No.2 before the learned trial Court) was to be examined as DW-1. However, an application



(Annexure P-4) for adjournment was moved on behalf of petitioner No.2 citing that the petitioner No.2 had undergone an AICD surgery for Pulse Generator Replacement at Asian Hospital, Faridabad and had been advised bed rest for 30 days. It is stated that medical record (Annexure P-5), along with the application, was submitted before the learned trial Court. Nevertheless, the learned trial Court in an arbitrary manner, closed the evidence of the petitioners without considering the request for the adjournment as pleaded for on account of the medical condition of the petitioner No.2.

4. Learned counsel also submits that the petitioners are senior citizens, who have defending the suit against the respondent-plaintiff. Petitioner No.2 attended the Court hearing for the last two dates before the learned trial Court. To support his arguments, he places on record various *zimini* orders passed in the Civil Suit.

5. It is stated that impugned order has harshly affected the petitioners and have prevented them from leading their evidence, causing serious prejudice to their rights in the suit. The learned counsel urges that the petitioners be given two opportunities to lead their evidence, and they shall conclude their evidence. On above submissions, a prayer is made to allow the petition.

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

7. It is a matter of record that respondent filed a suit for recovery against the present petitioners, which is pending adjudication before learned Civil Judge (Junior Division) Gurgaon and next date of hearing is

06.08.2024 for rebuttal evidence, if any, otherwise for arguments.



8. The *zimini* orders as placed on record by counsel for the petitioners indicate that the issues were framed in the suit on 05.11.2018 and thereafter the evidence of the respondent-plaintiff was closed on 08.08.2019 and the case was posted for 26.09.2019 for evidence of the petitioners-defendants. Further, the *zimini* order from 26.09.2019 to 06.02.2020 reveal that the petitioners availed three effective opportunities but failed to present their evidence on their behalf. Thereafter, the case was adjourned for different dates on account of restricted working of the Court due to spread of Covid-19. The order dated 23.08.2021 further indicates that again no evidence was present on behalf of the petitioners and case was posted for their evidence for 09.12.2021. Again, no evidence on behalf of the present petitioners was present and thereafter the case was posted for petitioners' evidence on 24.03.2022 on payment of costs of Rs.500/-. On 24.03.2022 the petitioner No.2 tendered his affidavit, and his cross-examination was deferred on the request of counsel for the respondent and thereafter it was again adjourned for cross examination of the petitioner No.2 for 05.09.2022. Again, on 02.12.2022 there was no evidence present on behalf of the petitioners and case was adjourned to 17.03.2023 for the evidence of the petitioners, contingent upon the payment of Rs.2000/- as costs to be deposited with DLSA, Gurugram. However, on 17.03.2023 none appeared on behalf of the petitioners, and they were proceeded *ex parte*. On the application of the petitioners, proceedings of *ex parte* were set aside on 31.05.2023 upon payment of Rs.4,000/- costs to the plaintiff. On 08.08.2023 and 08.11.2023 the petitioner No.2 was present, but he could not be subjected to cross-examination. At the request of the respondent's counsel, the case was adjourned for the cross-examination of the petitioner No.2 and



presentation of other evidence. Again, on 21.02.2024 no evidence was present on behalf of the petitioners and the case was posted for 21.03.2024 for petitioners' evidence. On that day, no evidence was again present on behalf of the petitioners. Instead, an application for adjournment was submitted, on the plea that the petitioner had undergone surgery. The learned trial Court, after considering all the facts and circumstances, as narrated above, found that the application for adjournment due to medical reasons was not supported by any affidavit or relevant documents, showing the inability of non- presentation of the petitioners' evidence. Additionally, the medical record provided by the petitioner did not indicate a need for a 30 day rest period, as the petitioner No.2 was discharged in a stable condition. Consequently, the Court closed the evidence.

9. The facts narrated as above are not in dispute. From the same, it is made out that the petitioners have not been diligent in pursuing their case. On earlier occasion also they were proceeded against *ex parte* . Despite grant of several opportunities, they failed to conclude their evidence. The medical record (Annexure P-5) indicates that petitioner No.2 was admitted in the hospital on 16.03.2024 and was discharged on 17.03.2024 in a stable condition. However, no malevolent reasons can be attributed to the petitioners for not presenting their evidence as directed by the learned trial Court, although from the record they seem to have been negligent in pursuing their case.

10. It is trite that all rules of procedure are handmaid of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. 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 than thwarting the same on rigid technicalities. Furthermore, the counsel on behalf of the petitioners undertakes to conclude the evidence if provided an opportunity.

11. In these circumstances, to do complete justice between the parties, I believe that one effective opportunity should be granted to the petitioners to conclude their evidence by way of cross-examination of the petitioner No.2, thereby enabling him to put forth his stand. Accordingly, impugned order dated 21.03.2024 (Annexure P-1) is set aside, subject to payment of Rs.20,000/- as costs payable by the petitioners to respondent (plaintiff), permitting the petitioners to conclude their evidence as indicated above at his own responsibility.

12. Petitioners are directed to appear before the learned trial Court on the due date of hearing as fixed before it and the petitioners shall present his evidence as indicated above. The learned trial Court shall examine the petitioner No.2 by considering the convenience of the counsel for the parties and its own board. Being an old case, it is expected that parties shall not take any undue adjournment.

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

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

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

(RITU TAGORE)  
JUDGE

01.08.2024  
Rimpal

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