

2024:PHHC:118190



IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

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CR-5181-2024 (O&M)

Date of decision: 09.09.2024

Manjit Kumar

...Petitioner

Versus

Subhash Chander and others

...Respondent

**CORAM: HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. Amit Kumar Saini, Advocate for the petitioner.

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**VIKAS SURI, J.**

1. This revision petition under Article 227 of the Constitution of India has been filed by the plaintiff/petitioner- Manjit Kumar assailing orders dated 18.07.2024 (Annexure P-4) and 05.08.2024 (Annexure P-7) passed by learned Civil Judge (Junior Division), Samrala, whereby it was ordered that no further opportunity was to be granted for leading additional evidence as conditional costs had not been paid while rebuttal evidence was closed by Court order and the application moved for recalling the said order, was dismissed.

2. Brief facts of the case are that plaintiff-petitioner filed a suit for joint possession by way of specific performance of agreement to sell dated 22.07.2014 regarding the suit land measuring 1B-6B-14B, situated in village Sihala, Tehsil Samrala, District Ludhiana or in the alternative, suit for recovery of Rs.13 lakh, i.e. Rs.11 lakh paid as earnest money and



Rs.2 lakh as damages with interest @ 1% per month and further for consequential relief of permanent injunction. The plaintiff-petitioner had moved an application before the trial Court seeking permission to lead additional evidence by examining one Harjit Singh son of Nikka Singh and Ram Gopal, Wasika Nawis, Samrala, witness and scribe of the agreement to sell in question, respectively. The said application was allowed by the trial Court vide order dated 09.07.2024 (Annexure P-3) subject to costs to be paid to the defendants and both the witnesses were to be examined at own responsibility. It was also ordered that to examine the said witnesses, only three effective opportunities will be given. The proceedings were deferred to 18.07.2024 for payment of costs and examination of the witnesses. On the adjourned date, as the costs were not paid to the defendants and the same being condition precedent to avail the opportunity to examine the witnesses, it was ordered that no further opportunity was to be granted to the plaintiff and rebuttal evidence was also closed by Court order. The petitioner moved an application seeking recalling of the order dated 18.07.2024 and permission to deposit the costs. It was pleaded that the plaintiff-petitioner had suffered an ankle injury and was advised complete bed rest for a period of 21 days, i.e. from 11.07.2024 to 07.08.2024. It was also sought to be explained that for the aforesaid unavoidable circumstances, the petitioner could not attend the hearing and his absence was neither intentional nor willful. The said application was considered in the light of the conduct of plaintiff-petitioner, the number



of opportunities already availed by him and doubting the genuineness of the medical certificate, the said application was dismissed.

3. Learned counsel for the petitioner submits that the petitioner seeks only two effective opportunities, in terms of the earlier order dated 09.07.2024, to conclude his entire evidence.

4. I have heard learned counsel for the petitioner and perused the paper-book.

5. Undisputedly, petitioner has availed sufficient opportunities to conclude his evidence and though one of the witnesses sought to be examined as additional evidence had tendered his affidavit while deposing as PW-2 and thereafter appeared for his cross-examination once, it was observed that the petitioner was negligent in conducting the trial. However, trial Court accepted the application for additional evidence, vide order dated 09.07.2024, the operative part of which is reproduced hereunder for reference:-

“5. Still the present court is the court of first instance and it is better that the evidence of all the material witnesses is taken completely on record, to decide the controversy effectively. But equally important that negligent party should be penalized for his negligent conduct. Therefore, taking into consideration the above said factors, the present application is allowed, subject to cost of Rs.5,000/- to be paid to defendants by the plaintiff. It is also made clear that both the witnesses will be examined by the plaintiff/applicant at own responsibility as it is a pleading of applicant that both the witnesses contacted



them and are ready to give evidence in the court and also only three effective opportunities will be given to plaintiff/applicant to examine both these witnesses.

6. Adjourned to 18.07.2024 for payment of cost and examination of witness Harjit Singh and Ram Gopal.”

6. On 18.07.2024, the trial Court after recording that neither the costs have been paid nor any witness examined by the plaintiff and since the payment of costs was the condition precedent to avail three effective opportunities, ordered that no further opportunity was to be granted to the plaintiff. Rebuttal evidence was also closed by Court order. While considering the application for recalling of the aforesaid order, on the ground that petitioner had suffered an ankle injury and advised bed rest, the past conduct of the petitioner was appraised and it was observed that even if the petitioner had suffered an injury on 17.07.2024, he could have sent the costs through some family member or even transmitted it electronically to his counsel for onward payment to the defendants. Apparently, there is no infirmity or illegality in the impugned orders. However, in the interest of justice, keeping in view that the application for leading additional evidence had been allowed by the Court despite the negligent conduct of the petitioner in conducting the trial, the same ought not have been the reason for the Court to deny availing of the opportunity already granted, which could have been made subject to payment of further costs.

7. Accordingly, to meet the ends of justice, I deem it



appropriate to allow the petitioner to avail the benefit of order dated 09.07.2024 (Annexure P-3) subject to payment of further costs of Rs.5000, i.e. Rs.10,000/- in total, to be paid to the defendant-respondents but limited to two effective opportunities to be given to the plaintiff-petitioner to examine both the aforesaid witnesses on the date to be fixed by the trial Court. It shall be the sole responsibility of the petitioner to secure the presence of his witnesses for their complete examination, failing which the evidence of the petitioner will be liable to be closed by Court order. It is made clear that failing to produce the evidence or to pay costs in terms of this order, the petitioner would not be entitled to any further opportunity for the said purpose and the trial Court would proceed with the matter without this order having any bearing on the trial.

8. As the present revision petition is being disposed *in limine*, liberty is granted to the defendant-respondents to seek recalling of this order, if valid grounds for the same are made out.

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

September 09, 2024  
*sumit.k*

(VIKAS SURI)  
JUDGE

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| Whether speaking/reasoned : | Yes / No |
| Whether Reportable :        | Yes / No |