

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

122

CR-6433-2023 (O&M)  
Decided on: 22.02.2024

Bandna Mangi @ Bandhna Mangi

...Petitioner

Versus

Baldev Singh and another

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Swarn Tiwana, Advocate  
for the petitioner.

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RITU TAGORE, J. (Oral)

1. Challenge in the present revision is to the order dated 09.10.2023 (Annexure P-7) passed by learned Additional Civil Judge (Senior Division), Fatehgarh Sahib in Civil Suit No.883 of 2019 titled as ‘Bandna Mangi Vs. Baldev Singh and another’, whereby the evidence of the petitioner (plaintiff before the learned trial Court), has been closed by order.
2. Keeping in view the limited scope of prayer, notice to respondents is dispensed with.
3. I have heard learned counsel for the petitioner and have gone through the paper book.
4. Learned counsel submits that the petitioner has filed a suit for possession and specific performance of agreement to sell dated 13.03.2019 against the respondents (defendants before the learned trial Court) and further

to declare the agreement to sell dated 29.09.2015 allegedly executed by respondent No.1-defendant No.1 in favour of respondent No.2-defendant No.2 as null and void, being result of fraud and conspiracy to defeat the rights of the plaintiff in the suit land, based on agreement to sell dated 13.03.2019 in her favour, or, in the alternate for recovery of Rs.26,20,000/- (double amount of earnest money) received by respondent-defendant No.1, further with consequential relief of permanent injunction restraining the respondents-defendants, and their agents/servants from alienating the suit land.

5. The learned counsel further submits the respondents-defendants caused their appearance in the aforesaid suit and filed their written statements (Annexures P-2 and P-3) respectively. The issues were framed on 03.09.2022 and the case was posted for evidence of the petitioner-plaintiff for 24.11.2022.

6. The learned counsel submits that the order dated 09.10.2023 (Annexure P-7) passed by the learned trial Court, closing the evidence of the petitioner-plaintiff, has materially prejudiced the rights of the plaintiff in the suit. While referring to various zimini orders, learned counsel submits that on some scheduled hearing dates, the evidence of the petitioner-plaintiff was present, but the cross-examination of her witness was deferred at the request of the counsel for the defendants. The learned counsel urges that petitioner be given one opportunity, she shall conclude her evidence.

6. After reviewing several zimini orders including the impugned order dated 09.10.2023 (Annexure P-7), it appears that despite availing several opportunities, the petitioner failed to conclude her evidence. According to the learned counsel of the petitioner, the statement of Mukesh Mangi-PW-1 has been concluded and cross-examination of Gurmukh Singh PW-2 was pending when her evidence was closed by Court order. Learned counsel further submits that apart from the testimonial account of Gurmukh Singh PW-2, the petitioner is left to be examined. The learned counsel undertakes to conclude the

evidence, if, one opportunity is provided to her.

7. Although, I find that the petitioner has been negligent in not prosecuting the litigation with due diligence but still it could 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 her evidence in one opportunity. The delay can always be atoned by imposing costs.

8. In circumstances to do complete justice between the parties, I believe that one opportunity be granted to the petitioner to conclude her evidence. Accordingly, impugned order dated 09.10.2023 (Annexure P-7) is set aside, subject to Rs.25,000/- as costs payable by the petitioner (revisionist) in Punjab and Haryana High Court, Bar Association Welfare Fund.

9. Petitioner is directed to appear before learned trial Court on the due date of hearing as fixed by the Court and submit the receipt of costs. The learned trial Court shall provide the petitioner with one effective opportunity to conclude her evidence i.e. (statement of PW2 and the petitioner –herself) on the day fixed or within a period of 10 days thereafter, taking into account the convenience to opposing party and the Court’s own workload.

10. Accordingly, revision petition is allowed in above terms.

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

(RITU TAGORE)  
JUDGE

22.02.2024  
Rimpal

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