



IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

Civil Revision No. 7368 of 2023 (O&M)  
Date of Decision: 24.07.2024

Bhim Singh  
..... Petitioner

Versus

Vikram and others  
..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Divyam Singh, Advocate  
for the petitioner-plaintiff.

None for respondent Nos. 1 to 3.

Mr. Wazir Singh, Advocate  
for respondent No. 4.

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HARKESH MANUJA, J. (ORAL)

The petitioner-plaintiff, by way of present revision petition, seeks setting aside of an order dated 23.11.2023 (Annexure P-17) passed by the learned Additional Civil Judge (Senior Division), Panipat (**hereinafter to be referred as “trial Court”**), whereby his evidence was closed.

[2] In the present case, the petitioner-plaintiff filed a suit for symbolic possession by way of specific performance of an agreement to sell dated 06.05.2004 directing respondent Nos. 1 & 2-defendant Nos. 1 & 2 to execute and get the sale deed registered in his favour regarding plot measuring 55 square meters No. 783, Sector-18, HUDA, Panipat and also for grant of mandatory injunction directing respondent No. 3-defendant No.3 (Haryana Urban Development Authority, Panipat) to transfer the said plot in

his favour with consequential relief of permanent injunction, restraining respondent Nos. 1 & 2-defendant Nos. 1 & 2 from interfering into the peaceful possession of the plaintiff over the suit property, besides alienating the same during pendency of the suit.

[3] Upon consideration of the pleadings of the parties, issues were framed by the trial Court on 11.05.2022 and the matter was fixed for recording of evidence of the petitioner-plaintiff for 18.08.2022. The zimni orders passed by the trial Court since 18.08.2022 till 14.11.2023 are re-produced hereunder:-

**“ Order: 18.08.2022**

*No evidence of plaintiff is present. Adjournment requested. Heard and allowed. Now to come up on 14.11.2022 for evidence of plaintiff, at his own responsibility.*

**Order: 14.11.2022**

*No evidence of plaintiff is present. Adjournment requested. Heard and allowed. Now to come up on 30.11.2022 for evidence of plaintiff, at his own responsibility. It shall be last opportunity.*

**Order: 28.03.2023**

*PW1 Bhim Singh is present and his examination-in-chief recorded as PW1 by Shri Anil Saini, Advocate, LC appointed by this Court for this purpose and Rs.300/- as LC fees paid. Cross-examination of PW1 is deferred due to Court time is over. Heard and allowed. No other evidence of plaintiff is present.*

*Now to come up on 12.05.2023 for cross-examination of PW1 as well as remaining evidence of plaintiff at his own responsibility. It shall be last opportunity.*

**Order: 12.05.2023**

*PW2 Narender Dhanda and PW4 Neeraj are present and their examination-in-chief recorded by Shri Pawan*

*Garg, Advocate, LC appointed by this Court for this purpose and Rs.300/- as LC fees paid. Cross-examination of PW2 and PW4 is deferred due to Court time is over.*

*PW3 Naresh Durga is present and recorded completely recorded by Shri Pawan Garg, Advocate, LC appointed by this Court for this purpose and Rs.300/- as LC fees paid.*

*Witness Jai Parkash, Clerk Estate Officer is present and suffered statement he has not brought summoned record and requested for adjournment for producing summoned record.*

*Another witness Ct. Shyam Kumar, 1241 SP Office is present and suffered statement that summoned record had destroyed on 31.12.2015. Heard.*

*No other evidence of plaintiff is present. Now to come up on 06.09.2023 for cross-examination of PW1, PW2 and PW4 as well as remaining evidence of plaintiff at his own responsibility. It shall be last opportunity.*

**Order: 06.09.2023**

*Witness Bhim Singh is present but could not be examined on request of learned counsel for plaintiff. Heard. Now to come up on 12.09.2023 for cross-examination of PW1, PW2 and PW4 as well as remaining evidence of plaintiff at his own responsibility. It shall be last opportunity. Present witness is discharged for today and bound down for the date fixed.*

**Order: 12.09.2023**

*PW1 Bhim Singh is present for his cross-examination but PW2 Narender and PW4 Neeraj are not present for their cross-examination. Learned counsel for defendant no.2 and 4 submitted that he has piece meal objection that of 3 witnesses are of same state of facts and they need to be cross-examined simultaneously on same date. That as PW2 and PW4 are not present, cross-examination of PW1 could not be conducted. Thus, he sought adjournment. Heard and allowed.*

*Adjourned to 09.10.2023 for cross-examination of all witnesses. Learned counsel for plaintiff is directed to call for PW1, PW2 and PW4 in the witness box on 09.10.2023.*

*Order: 09.10.2023*

*PW1 Bhim Singh is present for his cross-examination but PW2 Narender and PW4 Neeraj are not present for their cross-examination. Learned counsel for defendant no.2 and 4 submitted that he has piece meal objection that of 3 witnesses are of same state of facts and they need to be cross-examined simultaneously on same date. That as PW2 and PW4 are not present, cross-examination of PW1 could not be conducted. Thus, he sought adjournment. Heard and allowed.*

*Adjourned to 11.10.2023 for cross-examination of all witnesses. Learned counsel for plaintiff is directed to call for PW1, PW2 and PW4 in the witness box on the date fixed.*

***Order: 11.10.2023***

*PW1 Bhim Singh is present for his cross-examination but PW2 Narender and PW4 Neeraj are not present for their cross-examination. Learned counsel for defendant no.2 and 4 submitted that he has piece meal objection that of 3 witnesses are of same state of facts and they need to be cross-examined simultaneously on same date. That as PW2 and PW4 are not present, cross-examination of PW1 could not be conducted. Thus, he sought adjournment. Heard and allowed.*

*Adjourned to 14.11.2023 for cross-examination of all witnesses. Learned counsel for plaintiff is directed to call for PW1, PW2 and PW4 in the witness box on the date fixed.*

***Order: 14.11.2023***

*PW1, PW2 and PW4 again not present despite specific orders dated 09.10.2023 and 11.10.2023. As already stated in said orders, learned counsels for defendants No.2 and 4 have taken objections that all these witnesses are required to be cross-examined simultaneously on same date. Said witnesses are not being present, learned counsel for*

*plaintiff is directed to call these witnesses latest by 23.11.2023. It shall be the last opportunity failing which it will be deemed that these witnesses do not want to get themselves cross-examined and evidence of plaintiff will be closed. ”*

[4] Finally, order dated 23.11.2023 (Annexure P-17) came to be passed by the trial Court, vide which the evidence of petitioner-plaintiff was closed by Court order.

[5] Impugning the aforesaid order dated 23.11.2023, learned counsel for the petitioner submits that the passing of impugned order has caused serious prejudice to the rights of the petitioner as despite his three witnesses having tendered their affidavits in examination-in-chief, they could not be cross-examined. He further submits that in the absence of cross-examination, their deposition would not be considered by the Court and the petitioner-plaintiff would not be able to prove his cause set up in the plaint and thus, would suffer serious prejudice. He also submits that in case one opportunity is granted to the petitioner, he would conclude his entire evidence by producing all the three witnesses on one date and thus, prays for setting aside of the impugned order.

[6] On the other hand, learned counsel for respondent No. 4 submits that an objection was raised before the trial Court requesting the petitioner-plaintiff to produce all the three witnesses, namely, Bhim Singh (PW-1), Narender (PW-2) and Neeraj (PW-4) on one single date for their cross-examination as they were related to same set of evidence pertaining to the transaction in question. He thus submits that, on account thereof, the trial Court adjourned the matter for at least five times, yet the petitioner-

plaintiff failed to produce all the aforesaid three witnesses on one single day for their cross-examinations, thereby resulting into passing of the impugned order and thus, the same does not warrant any interference.

[7] After hearing learned counsel for the parties and having gone through the paper-book, I am unable to find substance in the submissions made on behalf of the petitioner.

[8] A perusal of the order dated 12.09.2023 passed by the trial Court shows that the counsel appearing on behalf of respondent No. 4-defendant No. 4 made a request to the trial Court that since all the three witnesses i.e. PW-1 (Bhim Singh), PW-2 (Narender) & PW-4 (Neeraj) were relating to same set of evidence pertaining to the transaction in question and, therefore, they all be made to appear on single day for cross-examination. Appreciating and accepting the said request, the trial Court directed the petitioner-plaintiff to produce all the three witnesses on the next date for their cross-examinations and the matter was adjourned to 09.10.2023. On the adjourned date, the petitioner-plaintiff though appeared himself being PW-1, yet failed to produce PW-2 & PW-4 for their cross-examinations and the matter was adjourned for 11.10.2023 for calling all the three witnesses for their cross-examinations. Even on the said date, the petitioner-plaintiff repeated the same thing and did not produce PW-2 & PW-4 and the Court was compelled to adjourn the matter for 14.11.2023 for same purpose. Still further, even on 14.11.2023, the petitioner-plaintiff did not produce PW-2 & PW-4 and the trial Court still in order to grant an opportunity to the petitioner-plaintiff, adjourned the hearing to 23.11.2023. Lastly on 23.11.2023, also the petitioner-plaintiff did the same thing and he instead of

producing PW-2 & PW-4 along, appeared himself only being PW-1 for cross-examination and the trial Court left with no other option but to proceed against the petitioner-plaintiff, was compelled to close his evidence by order on account of non-compliance of its previous directions.

[9] Further, a perusal of the *zimni* orders re-produced hereinabove also reflects that the petitioner-plaintiff despite there being specific observation by the trial Court to produce all his three witnesses on one date, made all efforts to avoid the same. In the humble opinion of this Court, the trial Court having adjourned the hearing at least for four occasions to achieve the presence of all the three witnesses on one single day for their cross-examination could not persuade the petitioner-plaintiff in this regard and was, thus, left with no other option but to pass the impugned order of closing his rights to produce PW-2 & PW-4 for their cross-examination.

[10] In such circumstances, no illegality or perversity could be found with the discretion exercised by the trial Court which despite never intending to pass any harsh order against the petitioner-plaintiff, but was made to do the same under forced circumstances created on account of rigid conduct of the petitioner-plaintiff as explained hereinabove. Although, the repeated non-compliance of the order passed by the trial Court, directing the petitioner to produce and examine his three witnesses on the same day is evidently egregious, yet, purely in the interest of justice and also considering the fact that PW-1 (petitioner-plaintiff) himself appeared on the date of passing of impugned order for his cross-examination, the impugned order is modified to the extent that the petitioner is permitted to appear before the trial Court so as to complete his deposition, however, the same shall be

subject to payment of costs of Rs.25,000/-, which shall be deposited by the petitioner with the trial Court on the date fixed and to be disbursed in favour of respondent(s)-defendant(s).

[11]            **Disposed off** accordingly.

[12]            Pending miscellaneous application(s), if any, shall also stand disposed off.

**July 24, 2024**  
*'dk kamra'*

**( HARKESH MANUJA )**  
**JUDGE**

|                                  |               |
|----------------------------------|---------------|
| <i>Whether Speaking/reasoned</i> | <i>Yes/No</i> |
| <i>Whether Reportable</i>        | <i>Yes/No</i> |