

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

.....

Civil Revision No.3854 of 2005

Date of decision:23.5.2006

Krishan Lal

.....Petitioner-defendant

Versus

Satish Kumar

....Respondent-plaintiff

Present : None for the petitioner.

Mr. K.R. Dhawan, Advocate for the respondent.

.....

**S.S. Saron, J.**

This revision petition under Article 227 of the Constitution of India has been filed by the defendant-petitioner for setting aside the order dated 17.5.2005 (Annexure P/1), whereby the evidence of the defendant has been closed by order of the Court.

The plaintiff – respondent filed a suit for specific performance of agreement of sale dated 22.3.2000, which is also stated to have been affirmed by a subsequent writing. A prayer was made for directing the respondent to execute the registered sale deed in favour of plaintiff – respondent for a total consideration of Rs.1,00,000/- out of which Rs. 75000/- is stated to have been paid as earnest money by the plaintiff to the defendant at the time of entering into the agreement of sale dated 22.3.2000. The balance sale consideration of Rs.25,000/- was to be paid at the time of registration of the sale deed in favour of the plaintiff before the Sub

Registrar, Zira. The dispute in the case is in respect of House measuring 3-1/2 Marlas as detailed in the head note of the plaint situated within the municipal limit, Zira in Ward No.10.

In terms of the impugned order, one defence witness was examined and there was no other defence witness present. Learned counsel for the defendant requested for an adjournment. However, his evidence was closed by observing that the defendant had already availed nine opportunities including one last opportunity for closing his evidence. At the time of motion hearing before this Court, it was contended on behalf of the petitioner that only six opportunities were granted to the defendant – petitioner to conclude his evidence, whereas the learned trial Court erroneously recorded that nine opportunities had been granted. Besides it was stated that the petitioner is a retired pensioner and he never entered into an agreement to sell the house and that he has to prove his signatures on the alleged agreement of sale by evidence of a hand-writing expert.

Learned counsel appearing for the respondent has contended that the order passed by the learned trial Court is just and reasonable and nine opportunities were indeed granted to the defendant – petitioner to produce his evidence. Therefore, it is contended that the petition is liable to be dismissed.

I have given my thoughtful consideration to the entire matter. In the grounds of revision it is submitted by the defendant-petitioner that counsel did not inform him about the last opportunity to lead evidence. However, the learned trial Court did not accept the request of the counsel and closed his evidence. It is further stated that the petitioner is a retired

government employee and is having only the house in question in which he is living with his family members and except this, he has no other house. Besides, he wants to examine a hand-writing expert to compare his signatures with the signatures on the alleged agreement of sale as he had never signed the same.

In the aforementioned circumstances, it is evident that no prejudice would be caused to the plaintiff – respondent in case the defendant – petitioner is allowed to examine a hand-writing expert and produce other evidence subject to grant of two effective opportunities. Besides the plaintiff – respondent can be adequately compensated with costs. In an adversary legal system, a party has to depend on his counsel through whom he appears. The obligation of the party after selecting a counsel is limited and he remains confident that having engaged a counsel his interest would be looked after. A party is not to act as a watchdog of the counsel that he has engaged. In the circumstances, the defendant-petitioner is not to suffer for the fact that his counsel is not stated to have informed him regarding the last opportunity that had been granted by the Court.

For the fore-going reasons, this revision petition is allowed. The order dated 17.5.2005 is set aside and the trial Court shall grant two effective opportunities to the defendant – petitioner to lead his evidence which shall further be subject to payment of Rs.1,000/- as costs.

( S.S.SARON )  
JUDGE

May 23, 2006  
VKD/hsp