

In the High Court of Punjab & Haryana at Chandigarh

Civil Revision No. 1478 of 2010 (O&M)

Date of decision : 31.3.2010

Fateh Singh

..... Petitioner

vs

Karambir Singh and others

..... Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Rakesh Nehra, Advocate, for the petitioner.

Mr. Vikrant Hooda, Advocate, for respondent no. 1.

Rajesh Bindal J.

Prayer in the present petition filed under Article 227 of the Constitution of India is for setting aside of order dated 22.2.2010 passed by the learned court below, whereby evidence of the petitioner-defendant no. 6 was closed by order of the court.

The proceedings in the present case arise out of a suit for declaration filed by respondent no. 1.

Learned counsel for the petitioner submitted that the suit was filed by the plaintiff on 11.8.2001 and after filing of written statement, the issues were framed in the year 2002. The plaintiff closed his evidence on 24.9.2008 and thereafter the case was adjourned for petitioner/ defendant's evidence. The petitioner is 90 years of age and is suffering from various health problems. It was also submitted that due to old age, he was not physically fit, hence, unable to appear in court. As his deposition was necessary, he filed application for his examination as a witness on commission but that application was dismissed by the court vide order dated 17.11.2009. Thereafter, the petitioner filed application for appointment of his son Dharampal as guardian ad-litum for the petitioner but that application was also dismissed by the learned court below vide order dated 2.2.2010 and the case was adjourned to 22.2.2010 for the evidence of the petitioner being last opportunity.

Aggrieved against the dismissal of aforesaid applications, the petitioner filed Civil Revision No. 1237 of 2010 – titled as **Fateh Singh vs Karambir Singh and others**, in this court. On 22.2.2010, the petitioner sought adjournment before the court below on the ground that his civil revision is pending before this court but his request was turned down and the impugned order closing

his evidence was passed. The aforesaid revision petition was dismissed by this court on 24.2.2010. He prayed that in case one opportunity is granted, the petitioner will complete his entire evidence on the next date of hearing i.e. 7.4.2010.

On the other hand, learned counsel for respondent no. 1/plaintiff submitted that aim of the petitioner is only to delay the proceedings. Vide order dated 2.2.2010, the court below granted the last opportunity to the petitioner subject to payment of cost of Rs. 500/- and it was observed that payment of cost shall be condition precedent for further continuance of the defence of the petitioner/defendant no. 6. The submission is that in view of the fact that the petitioner has not paid the costs and availed of number of opportunities, the order of the court below closing the evidence of the petitioner by order be upheld.

Heard learned counsel for the parties.

The facts submitted by the learned counsel for the parties are borne out from the record. The petitioner cannot be stated to be at fault, solely considering his age, especially when he was availing of his legal remedies. Further after the framing of issues in the year 2002, the evidence of the plaintiff was concluded in about six years i.e. on 24.9.2008. On the date when the impugned order was passed, the petitioner sought adjournment on the ground that his revision against the orders dismissing his applications for examining him as a witness on commission and appointment of his son Dharampal as guardian ad-litum was pending in this court. The case is now stated to be fixed before the court below on 7.4.2010.

In view of the above facts and circumstances, while setting aside the impugned order dated 22.2.2010, closing the evidence of the petitioner, the learned court below is directed to grant one opportunity to him for completing his entire evidence on the date already fixed by it. The same shall be subject to payment of Rs. 2,000/- as costs to the respondent in addition to the costs already imposed by the learned trial court. It is, however, made clear that no further opportunity shall be granted to the petitioner in case he fails to complete his entire evidence on the date fixed.

The revision petition is disposed of in the manner indicated above.

Copy of the order be given dasti on payment of usual charges.

31.3.2010
vs.

(Rajesh Bindal)
Judge