

(1999) 02 P&H CK 0015

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 2163 of 1998

Shanti Devi

APPELLANT

Vs

Nand Kishore and Others

RESPONDENT

Date of Decision: Feb. 10, 1999

Citation: (1999) 123 PLR 427 : (2000) 1 RCR(Civil) 290

Hon'ble Judges: Swatanter Kumar, J

Bench: Single Bench

Advocate: A.K. Sharma, for the Appellant; Dhirinder Chopra, for the Respondent

Final Decision: Allowed

Judgement

Swatanter Kumar, J.

This revision against the order dated 12.5.1998 passed by the learned Civil Judge (Junior Division), Patiala, after notice, was heard on merits on 15.1.1999 when the following order was passed:-

"Petition is allowed subject to payment of Rs. 3,000/- as costs, costs being conditional.

Reasons to follow."

Thus, now I proceed to record the reasons.

2. Suit for permanent injunction was filed by the plaintiff against the defendants from closing the gate from point A to point B in the courtyard of the house of the plaintiff and further from interfering in the peaceful possession of the property in suit. The suit was contested by the defendants.

3. After the issues were framed plaintiff was given opportunities to produce his entire evidence. On 26.9.1997, the second date for recording the evidence of the plaintiff, the Court had directed that plaintiff shall produce the entire evidence at his own risk and responsibility. However, one PW was examined as no other PW was present and the case was adjourned. Vide order dated 12.5.1998 the evidence of the

plaintiff was closed by order of the Court. It is this order, which is assailed in this revision.

4. The learned counsel for the respondents relied upon the judgment of this Court in the case of Lilu v. Om Parkash (1991) P.L.R. 289 to contend that the order of the learned trial Court is not liable to be interfered with. The counsel for the respondents has also contended that the revision is not maintainable. The learned counsel for the petitioner has relied upon the case of [Hazara Singh and Others Vs. Bachan Singh and Others](#) .

5. In view of the judgment of this Court in the case of Hazara Singh and others (supra) I have no hesitation in holding that the present revision petition is maintainable. There cannot be any straight jacket formula which could be adopted universally by the Court" in determining the controversy in such suits. Each case has to be judged on its own merits. Vide order dated 12.5.1998 the-evidence of the plaintiff was ordered to be closed after giving them some opportunity to lead evidence. However, it needs to be noticed that right on the second date of hearing the plaintiff was granted time subject to the condition that he will produce the entire evidence at his own risk and responsibility. Thus, the procedure of summoning the witnesses through the process of Court was shut upon the plaintiff on the second date itself. Thereafter no warning was given by the Court to the plaintiff or his counsel intending that evidence would be closed. It has been held by this Court in the case of Joginder Singh and Ors. v. Smt. Manjit Kaur, Civil Revision No. 5885 of 1998 decided on 14.1.1999 that the orders of such serious consequences must be proceeded by orders of lessor gravity effecting the rights of the parties which would be granting last opportunity and imposing costs. The intention of such order would be to put the party as well as the counsel at notice before the order of such serious gravity would be passed denying the party opportunity to prove its case.

6. The learned counsel for the petitioner has contended that it is not factually correct that no witness was present in the Court except the person examined in Court that day. Certainly the petitioner has been negligent in pursuing his suit properly but it will not be fair and just to deny opportunity to the plaintiff to prove his case in the facts and circumstances of the present case. Therefore, I had allowed this revision by the above order. It is made clear that within the next two dates of hearing the petitioner must close his evidence and he would be at large to take the summons through the process of Court but the responsibility of producing such witness would be that of the petitioner. The petitioner would not be entitled to any further adjournment. In the event of non-production of witnesses or non-payment of cost, which are stated to be conditional, the learned trial Court may be justified in closing the evidence forthwith.