

(2010) 09 P&H CK 0306

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 5890 of 2010

Sahab Singh

APPELLANT

Vs

Amrik Singh and Others

RESPONDENT

Date of Decision: Sept. 14, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 17 Rule 1
- Constitution of India, 1950 - Article 227

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Final Decision: Allowed

Judgement

L.N. Mittal, J.

C.M. No. 23338-C-II of 2010:

1. Allowed as prayed for.

Main Case:

2. Plaintiff Sahab Singh has invoked jurisdiction of this Court under Article 227 of the Constitution of India by way of instant revision petition to assail order dated 30.08.2010 passed by learned Additional Civil Judge (Senior Division), Guhla (Annexure P-3), thereby closing evidence of the plaintiff-petitioner by court order.

3. I have heard learned Counsel for the petitioner and perused the case file.

4. Learned Counsel for the petitioner prays that only one more opportunity may be granted to the petitioner to lead his remaining evidence at own responsibility on payment of cost. It is also pointed out that plaintiff had summoned two witnesses and one of them Mani Ram was served for 28.05.2010, but was not present.

5. I have carefully considered the aforesaid prayer. According to proviso to Order 17 Rule 1 of the Code of Civil Procedure, only three opportunities are required to be granted to a party for its evidence. However, the said provision being rule of procedure is directory and not mandatory. It cannot be followed with extreme rigidity, but has to be observed with some flexibility. In the instant case, five opportunities in all were granted to the plaintiff-petitioner for his evidence. It appears from the zimni orders of the trial court, as reproduced in the revision petition, that for two dates of hearing fixed for evidence of the plaintiff-petitioner, no witness was summoned and therefore, the case was adjourned for evidence of the plaintiff at his own responsibility. Consequently, subsequent summoning of witnesses through Court did not discharge the burden of the plaintiff to produce his evidence at own responsibility. However, keeping in view all the circumstances, I am of the considered opinion that ends of justice would be met if one more opportunity is granted to the petitioner for his remaining evidence at own responsibility on payment of cost.

6. I intend to dispose of the instant revision petition without issuing notice to the respondents so as to avoid further delay in the disposal of the suit and to save the respondents of the expenses, which they may have to incur in engaging counsel for the revision petition, if notice thereof is issued to them.

7. For the reasons aforesaid, the instant revision petition is allowed and trial court is directed to grant only one more opportunity to the petitioner for his remaining evidence at own responsibility, subject to payment of Rs. 5,000/- as cost precedent. Plaintiff-petitioner may take assistance of the Court for summoning evidence. However, not more than one opportunity shall be granted to the petitioner for his evidence, even on the ground of non-service of any witness or non-appearance of any witness in spite of service or on any other ground, whatsoever.