

**(2010) 09 P&H CK 0392**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** C.R. No. 5871 of 2010

Pickadali Real Estate Private  
Limited

APPELLANT

Vs

Horizon Estates Private Limited  
and Others

RESPONDENT

**Date of Decision:** Sept. 13, 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.

Defendant No. 4 has filed this revision petition under Article 227 of the Constitution of India assailing order dated 25.08.2010 passed by learned Additional Civil Judge (Senior Division), Karnal (Annexure P-1), thereby closing evidence of the defendants by court order.

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

3. Learned Counsel for the petitioner prays that only one more opportunity may be granted to the petitioner to lead its remaining evidence at own responsibility on payment of cost.

4. I have carefully considered the aforesaid prayer. Perusal of zimni orders mentioned in the revision petition reveals that the defendants were granted five effective opportunities for their evidence and in spite thereof, they failed to conclude their evidence. According to proviso to Order 17 Rule 1 of the Code of Civil Procedure, only three opportunities are required to be given to a party for its

evidence. However, the said provision being rule of procedure is directory and not mandatory. It is not required to be followed with extreme rigidity and there has to be some flexibility in observing this rule.

5. In the instant case, I am of the considered opinion that ends of justice would be met if the aforesaid prayer made by learned Counsel for the petitioner is accepted on payment of cost.

6. I intend to dispose of the instant revision petition without issuing notice to plaintiff-respondent No. 1 so as to avoid further delay in the disposal of the suit and to save plaintiff-respondent No. 1 of the expenses, which it may have to incur in engaging counsel for the revision petition, if notice thereof is issued to it.

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-defendant No. 4 for its remaining evidence at own responsibility, subject to payment of Rs. 10,000/- as cost precedent. Petitioner may take assistance of the Court for summoning evidence. However, not more than one opportunity shall be granted to the petitioner for its 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.