

228 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

RSA-5641-2015 (O&M)  
Date of Decision:04.08.2025

PARAMJIT SINGH

...Appellant

Vs.

PUJA AND ANOTHER

...Respondent

**CORAM:- HON'BLE MS. JUSTICE NIDHI GUPTA**

Present: Ms. Puja Chopra, Advocate  
for the appellant.

Mr. Malkeet Singh Balianwali, Advocate  
for respondent No.1.

**NIDHI GUPTA, J. (Oral)**

1. The present regular second appeal has been filed by the plaintiff-appellant against the concurrent judgments and decrees of the learned Courts below whereby the suit filed by the plaintiff for specific performance and permanent injunction has been dismissed by both the Courts below under Order 17 Rule 3 CPC.

2. Brief facts of the case are that defendant No.1 being owner and in possession of the suit land as described in the plaint had entered into an Agreement to Sell dated 06.02.2008 for sale of the suit plot to the plaintiff @ 2760 per sq. yards. It was pleaded in the plaint that defendant No.1 had received an amount of Rs.2,00,000/- as earnest money from the plaintiff; and sale deed in regard to the suit plot was agreed to be executed by defendant No.1 in favour of plaintiff on or before 04.11.2008 on the payment of balance sale consideration. It was further pleaded in the plaint that possession of the suit land was handed over to the plaintiff at time of execution of agreement. Whereupon Plaintiff had constructed a house and got electricity connection in his name on 04.03.2008. However, defendant no.1 had failed to execute the

sale deed. Plaintiff had got issued a legal notice dated 24.02.2012 to the defendants. However, to no avail. Accordingly present suit was filed by the plaintiff on 27.03.2012.

3. Upon notice, defendant No.1 had filed the written statement specifically denying the averments made in the plaint. It was averred that defendant No.1 never agreed to sell her land vide Agreement dated 06.02.2008. Accordingly, dismissal of the suit was prayed for.

Plaintiff had filed replication controverting the averments made in the written statement and reiterating those made in the plaint. On the basis of the pleadings of the parties, following issues were framed by the trial Court:

- 1. Whether the plaintiff is entitled to specific performance as prayed for ? OPP.*
- 2. Whether the plaintiff is entitled to permanent injunction as prayed for ? OPP.*
- 3. Whether the plaintiff is entitled to mandatory performance as prayed for ? OPP.*
- 4. Whether the agreement to sell dated 06.02.2008 is forged and fabricated document?OPD*
- 5. Whether the present suit is not maintainable on the ground that there is no cause of action to file the present suit?OPD*
- 6. Whether the defendant No.2 had no authority to execute the sale deed in question?OPD*
- 7. Relief.*

4. As the plaintiff failed to lead any evidence, his evidence was closed by Court order dated 9.1.2014. Subsequently, vide judgment and decree dated 09.01.2014, suit of the plaintiff came to be dismissed by the Civil Judge, Junior Division, Patiala, under Order 17 Rule 3 CPC. The appeal filed by the plaintiff was also dismissed by the Court of Additional District Judge, Patiala vide judgment and decree dated 06.07.2015. Hence, the present 2<sup>nd</sup> appeal by the plaintiff.

5. It is *inter alia* submitted by learned counsel for the appellant/plaintiff that the learned Courts below were in patent error in dismissing the suit of the plaintiff. It is submitted that the issues were framed in the matter on 08.10.2013. Thereafter only 05 opportunities over a period of 03 months were given to the plaintiff for leading evidence. Last opportunity was granted only on 09.01.2014 when the evidence of the plaintiff was closed by order; and suit of the plaintiff was dismissed under Order 17 Rule 3 CPC.

6. Learned counsel contends that first and foremost that trial Court hastily and inequitably dismissed the suit of the plaintiff without appreciating that only 05 opportunities were granted and that too only over a period of 03 months. It is submitted that in this circumstance there was no urgency to close the evidence of the plaintiff.

7. It is further submitted that suit of the plaintiff could not have been dismissed under Order 17 Rule 3 CPC and could at best have been dismissed under Order 17 Rule 2 CPC as the two provisions provide for dismissal of the suit in distinct manners. It is contended that once plaintiff and witnesses both are not present, civil suit can be dismissed only under Order 17 Rule 2 CPC, and not under Order 17 Rule 3 CPC.

8. Learned counsel further submits that while dismissing the appeal as well as the application for additional evidence learned ASJ has failed to consider the facts and circumstances of the case and has further failed to appreciate that the appellant was not informed and advised by his counsel as the appellant is unaware of legal intricacies. The said counsel did not apprise the appellant even about the dismissal of the suit. It is only upon enquiry from the reader of the court that the appellant discovered on 15.03.2014 about the

dismissal of his case by the Trial Court vide judgment and decree dated 19.01.2014; and consequently, he applied for certified copy of said judgment and decree on 15.03.2014 itself and got the appeal filed on 24.03.2014.

It is submitted that the Ld. Courts below have gravely erred in not appreciating that the Agreement to Sell dated 6.2.2008 was acted upon pursuant to which possession of the suit plot was delivered to the appellant and the appellant has even constructed a house over suit land and has also got installed an electric connection on his name on 04.03.2008 which was applied after getting the consent and affidavit of respondent No.1 the owner. A detailed application was filed by appellant under Order 41 Rule 27 CPC which has wrongly been declined.

9. Accordingly, prays that the impugned judgments and decrees of the learned Courts below be set aside.

10. *Per contra*, learned counsel for the respondent vehemently opposes the prayer made on behalf of the plaintiff and submits that even the civil appeal filed by the plaintiff against the judgment and decree dated 09.01.2014, was filed with a delay of 03 months 01 week and 06 days. It is contended that accordingly the plaintiff has displayed an utterly careless attitude in the pursuit of the present litigation. It is submitted that 05 effective opportunities were granted to the plaintiff to lead evidence, however, he abjectly failed to do so. Furthermore, the plaintiff does not deny these facts. Therefore, the impugned judgments and decrees suffer from no error. Accordingly, prayer is made for the dismissal of the present appeal.

11. No other argument is made on behalf of the parties. I have heard learned counsel and perused the case file thoroughly. Upon consideration of the rival submissions of both the parties, I find no merit in the submissions

made on behalf of the appellant.

12. It has been submitted by learned counsel for the appellant/plaintiff that plaintiff was afforded only 05 opportunities spread over 03 months to lead his evidence. Admittedly, issues in the present case were framed on 08.10.2013. Thereafter matter was adjourned for 30.10.2013, and further on 15.11.2013, 27.11.2013, 12.12.2013 and finally to 09.01.2014 to enable the plaintiff to lead evidence. Perusal of the Zimni Orders Annexure A-2 (collectively) show that on each of the above said dates, the plaintiff evidence was not available. Subsequently, last opportunity was granted on 12.12.2013; and on 09.01.2014 evidence of the appellant was closed by the following Court order:

*“No evidence of plaintiff is present despite the fact that today last opportunity was granted to the plaintiff. It seems that plaintiff is not interested in pursuing the case, as such evidence of the plaintiff is closed by order of the court.*

*Arguments heard. Vide my separate detailed judgment of even date, the suit of the plaintiff has been dismissed under Order 17 Rule 3 CPC. Decree sheet be prepared accordingly. File be consigned to the record room.”*

13. In these circumstances, argument of the plaintiff to the effect that a lenient view ought to have been taken is liable to be rejected in view of the judgment of the Hon'ble Supreme Court in **Shiv Cotex v. Tirgun Auto Plast P. Ltd. (SC) : Law Finder Doc Id # 271160** wherein it has been observed that *“No litigant has a right to abuse the procedure provided in the CPC. Adjournments have grown like cancer corroding the entire body of justice delivery system.”* What is even more surprising is that no reasons have been given by the plaintiff for not leading evidence on the said 05 dates. It is to be appreciated that very valuable public time is extended in affording multiple

opportunities to complete evidence or to submit arguments. This public time cannot be taken lightly or for granted. It is the duty of every litigant as also the Courts to ensure that the Court time is expended judiciously.

14. It has also been submitted by the learned counsel for the plaintiff that the suit of the plaintiff could at best have been dismissed under Order 17 Rule 2 CPC and not under Order 17 Rule 3 CPC. Both provisions are reproduced as under:

***“2 . Procedure if parties fail to appear on day fixed.***

*Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit.*

*Explanation-*

*Where the evidence or a substantial portion of the evidence of any party has already been recorded and such party fails to appear on any day to which the hearing of the suit is adjourned, the Court may, in its discretion, proceed with the case as if such party were present.*

***3. Court may proceed notwithstanding either party fails to produce evidence, etc.***

*Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default,-*

- (a) if the parties are present, proceed to decide the suit forthwith, or*
- (b) if the parties are, or any of them is, absent, proceed under rule 2.”*

15. However, I find no merit in the said argument. A bare reading of the above shows that dismissal/disposal of the suit under Rule 2 is envisaged where evidence has not been led; whereas Rule 3 provides for disposal post leading of evidence. The argument of the appellant to this effect is therefore, misguided and is based on mis-reading of the said provision. Appellant can

also derive no benefit from the relied-upon judgment of the Hon'ble the Supreme Court in **Mohan Das v. Ghisia Bai, (SC) : Law Finder Doc Id # 2605**; and judgments of this Court in **Inderbir Singh v. Kirpal Singh (P&H) : Law Finder Doc Id # 501796**; and **Renu Bakshi v. Prem Parkash Sharma, (P&H) : Law Finder Doc Id # 855980**, as the same are distinguishable on law and facts.

16. Before parting it is necessary to point out that before the learned Lower Appellate Court, the appellant had attempted to circumvent the dismissal of her suit under Order 17 Rule 3 CPC by filing an application under Order 41 Rule 27 CPC ostensibly for production of additional evidence. In the said application, it has been averred that necessary evidence could not be produced due to lapse on part of counsel for the appellant. However, learned Lower Appellate Court in the judgment dated 06.07.2015 has categorically recorded that the additional evidence sought to be produced by the appellant before the Lower Appellate Court was very much available with the appellant before the learned trial court as well. However, the same was not produced due to lack of due diligence by the appellant. Learned Lower Appellate Court had categorically recorded that *“but applicant failed to convince that it was not done inspite of due diligence in the Trial Court and to my mind these all documents and facts were well within the knowledge of the applicant and applicant can not request for additional evidence on these grounds and if such type of applications on such type of reasons for additional evidence are allowed then it will open a flood gate of such type of applications which will further delay the proceedings in courts to reach to its logical end and on the whole the applicant has not been able to show that the request made in the application is in any manner essential for the just decision of the case”*

17. It has further been submitted on behalf of the appellant that the suit of the appellant was dismissed as the previous counsel who had filed the suit had failed to inform the appellant regarding the status of the suit despite her repeated queries in this regard. However, the said argument of the appellant is also not acceptable as the entire blame for careless pursuit of litigation cannot be foisted only upon the counsel. It is also incumbent upon the appellant to be a responsible litigant vigilant to his rights. In this regard, reference is made to a recent judgment of the Delhi High Court in ***Moddus Media Pvt. Ltd. v. M/s. Scone Exhibition Pvt. Ltd., (Delhi) : Law Finder Doc Id # 887148*** holding that:

*“11. The litigant owes a duty to be vigilant of his rights and is also expected to be equally vigilant about the judicial proceedings pending in the court of law against him or initiated at his instance. The litigant cannot be permitted to cast the entire blame on the Advocate. It appears that the blame is being attributed on the Advocate with a view to get the delay condoned and avoid the decree. After filing the civil suit or written statement, the litigant cannot go off to sleep and wake up from a deep slumber after passing a long time as if the court is storage of the suits filed by such negligent litigants. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory put forth by the appellant/applicant/defendant company, which cannot be accepted and ought not to have been accepted.”*

18. In the present facts and circumstances, it would be apposite to refer to judgment of Coordinate Bench of this Court in ***Ram Pal v. Saraswati Kunj Co-op. House Building Society Ltd (P&H) : Law Finder Doc Id # 605258***, wherein it has been held as under: –

*“Civil Procedure Code, 1908, Order 6, Rule 17 - Additional Evidence sought to be produced after closing of evidence of both the parties, alleging that previous lawyer was negligent in perusing the case - Trial court rightly observed that the evidence, sought to be produced was in the knowledge of the plaintiff since the very*

*beginning - Therefore, the application was rightly rejected - Revision petition dismissed.”*

19. Another judgment of Coordinate Bench in ***Chand Singh v. Naranjan Singh (Punjab and Haryana) : Law Finder Doc Id # 407811*** is relevant: –

*“Civil Procedure Code, 1908 - Additional Evidence - Plaintiff's evidence was closed by the order of court - Said order was never challenged by plaintiff by filing any revision petition against the same - Now by making this application for additional evidence, plaintiff cannot set at naught the said order - His application for additional evidence was rightly dismissed.”*

20. Keeping in view the entirety and facts and circumstances of the case, as also the above noted legal position, no ground is made out to interfere in the concurrent judgments and decrees of the learned Courts below.

21. The present appeal is accordingly **dismissed**.

22. Pending miscellaneous application(s), if any, shall stand(s) disposed of.

**(NIDHI GUPTA)**  
**JUDGE**

**04.08.2025**

**kv**

*Whether speaking/reasoned* : *Yes/No*  
*Whether reportable* : *Yes/No*