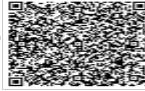


**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****132****CR-6122-2025 (O&M)
Date of decision: 08.09.2025****Vijay Kumar Girdhar and others****...Petitioner(s)****Vs.****Vijay Kumar Jain and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**Present:- Mr. H.S.Kohli, Advocate
for the petitioners.Mr. Sumeet Jain, Advocate
for the caveator/respondents.

NIDHI GUPTA, J.

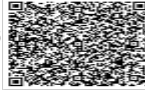
Present Civil Revision under Article 227 of Constitution of India has been filed by the plaintiffs against the order dated 27.05.2025 whereby application (Annexure P-23) filed by the petitioners under Section 151 CPC for recalling of order dated 04.07.2024; whereby evidence of the petitioners had been closed by Court order; and praying for permitting the petitioner/plaintiffs to lead evidence; has been dismissed by the learned Civil Judge (Junior Division), Gurugram.

2. Learned counsel for the petitioner submits that in passing the impugned order and not recalling the order dated 04.07.2024, learned Civil Judge, (Junior Division), Gurugram failed to appreciate that order dated 04.07.2024 had been passed without jurisdiction *in-as-much* as



pecuniary jurisdiction of the said Court had changed. As such, evidence of the plaintiffs could not have been closed by order by the learned Civil Judge without having jurisdiction to entertain the matter. Accordingly, application had been moved by the petitioners before the learned District Judge, Gurugram for transfer of the suit in view of the change in the pecuniary jurisdiction of the learned Civil Judge. The said application was returned by learned District Judge to move the application before the learned Trial Court in this behalf. Thus, application was moved by the petitioners before the learned Trial Court to send the case file of the present suit to the Court of learned District Judge, Gurugram for transfer to the appropriate Court having pecuniary jurisdiction to try and decide the present suit. Learned counsel refers to the zimni orders passed by the learned Trial Court in this regard dated 09.09.2024 (Annexure P-20) and 21.10.2024 (Annexure P-21). It is contended that accordingly as "*on 04.07.2024, the Ld. Trial Court was not competent to try and decide the present suit owing to not having the pecuniary jurisdiction, therefore the order dated 04.07.2024 should not have been passed and the Ld. Trial Court ought to have sent the file to the Ld. District Judge Gurugram for transfer to some appropriate Court having jurisdiction to try and decide the present suit, however on account of passing of order dated 04.07.2024, a great prejudice was caused to the petitioners and they have been deprived of their legal right to contest the suit on the merits.*"

3. It is submitted that, therefore, in view of the above facts, learned Civil Judge ought not to have passed the order dated 27.05.2025



dismissing the application of the petitioners under Section 151 CPC seeking recall of the order dated 04.07.2024 which had been passed by the Civil Judge without jurisdiction.

4. *Per contra*, learned counsel for the caveator/respondents/defendants opposes submissions made on behalf of the petitioners and submits that the conduct of the petitioners is self-speaking *in-as-much* as although the suit is of the year 2021, yet the petitioners have failed to conclude their evidence even 4 years thereafter.

5. It is pointed out that petitioners had previously also filed a **Civil Revision No. 4718 of 2024** titled as **Vijay Kumar Girdhar and others vs. Vijay Kumar Jain and others** laying challenge to the order dated 04.07.2024 itself. In the said CR No. 4718 of 2024, petitioners had raised no objection and made no mention of the pecuniary jurisdiction of the learned Civil Judge. As there was no merit to the Civil Revision, the same was, ordered to be dismissed as withdrawn by a Predecessor Bench of this Court vide order dated 22.08.2024 (Annexure P-22), in the following terms:-

"1. Present revision petition has been filed under Article 227 of the Constitution of India, for setting aside the order dated 04.07.2024 by the Additional Civil Judge (Sr. Divn.) Gurugram, vide which the evidence of the petitioners/plaintiffs has been closed.

2. Learned counsel for the petitioners, after arguing for some time, seeks to withdraw the present revision petition with



liberty to the petitioners to move an appropriate application before the trial Court.

3. Dismissed as withdrawn, with the aforesaid liberty.

4. It is made clear that this Court has not opined on the maintainability or otherwise of the application proposed to be filed by the petitioners and in case, any such application is filed by the petitioners, the same would be considered by the trial Court independently, in accordance with law.”

6. It is submitted that it is in pursuance to the above said order dated 22.8.2024 that the instant application was filed by the petitioner which has been dismissed vide the impugned order dated 27.5.2025. It is submitted that the impugned orders suffer from no error, and the present petition deserves to be dismissed.

7. In support of his contentions, learned counsel for the caveator/respondents/defendants refers to the following judgments: -

1. Shiv Cotex v. Tirgun Auto Plast P. Ltd. and others (SC): Law Finder Doc Id# 271160;

2. Gayathri v. M.Girish (SC) 2016(3) R.C.R. (Civil) 942;

3. Ishwarlal Mali Rathod vs. Gopal and others (SC): Law Finder Doc Id# 1886798;

4. Balkar Singh vs. Didar Singh (P&H): Law Finder Do Id# 783347;

5. Bachitter Singh v. Presiding Officer and others (P&H) : Law Finder Doc Id # 398324;

6. Gian Singh v. Assistant Registrar Co-op Societies, Dasuya and another (P&H) : Law Finder Doc Id # 256613;

7. Gurpreet Kaur v. Surinder Singh, (Punjab And Haryana) : Law Finder Doc Id # 2736437;



8. **Shri Rishi Balmiki Mandir v. Gurdev Singh, (Punjab And Haryana) : Law Finder Doc Id # 2636689;**
9. **Rajinder Singh v. Jagran Agent Private Limited and another, (Punjab And Haryana) : Law Finder Doc Id # 1413603;**
10. **Ranga Singh v. Teja Singh, (P&H) : Law Finder Doc Id # 779628;**
11. **Bussa Overseas & Properties (P) Ltd. v. Union of India and another (SC) : Law Finder Doc Id # 735085;**
12. **Municipal Corporation of India v. Yashwant Singh Negi (SC) : Law Finder Doc Id # 422105;**
13. **Rajesh Gulia v. Saurabh Shivhare and another, (Punjab and Haryana) : Law Finder Doc Id # 1450089;**
14. **Civil Appeal No. 564 of 1970 titled as Koopilan Uneen's daughter Pathumma and others vs. Koopilan Uneen's Son Kuntalan Kutty dead by LRs and others, decided on 06.08.1981;**
15. **Hasham Abbas Sayyad v. Usman Abbas Sayyad and others, (SC) : Law Finder Doc Id # 125193;**
16. **Vinod Kapoor v. State of Goa and others (SC) : Law Finder Doc Id # 395385.**

8. In **Shiv Cotex's case (supra)**, it is held that *"plaintiff not producing evidence despite three opportunities-Evidence closed and suit rightly dismissed by trial Court"*.

9. It is accordingly prayed that there is no merit in the present Civil Revision; and the same may be dismissed.

10. No other argument is made by Id. counsel for the parties.



11. I have heard Id. counsel and perused the case file in detail. I find no merit in the submissions made on behalf of the petitioners.

12. Brief facts of the case in chronological order are as follows:

3.8.2021: The petitioners/plaintiffs had filed a suit for declaration, permanent and mandatory injunction (Annexure P-1) on dated 03.08.2021 accompanied by an application under Order 39 Rules 1 and 2 CPC.

09.08.2021: Vide order dated 09.08.2021, notice of the suit as well as the application was issued for 23.08.2021.

23.08.2021: Notice to defendants ordered; case adjourned to 27.08.2021.

27.08.2021: Application (Annexure P-3) under Order 7 Rule 11 CPC was filed by the defendants No.1 and 2 for rejection of the plaint.

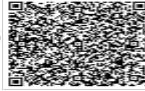
08.09.2021: Defendants No. 1 and 2 filed written statement to the suit and reply to the application under Order 39 Rules 1 and 2 CPC.

27.09.2021: Reply to Order 7 Rule 11 not filed; adjourned to 04.10.2021, stay application also to be heard.

04.10.2021: Reply to Order 7 Rule 11 not filed; adjourned to 18.10.2021.

18.10.2021: Reply to Order 7 Rule 11 not filed; adjourned to 19.10.2021.

19.10.2021: On 19.10.2021, an application under Order 23 Rule 1 CPC for withdrawal (Annexure P-4) of the Civil Suit with liberty to file afresh, was filed by the petitioners. A reply to the said application for



withdrawal of the suit was also filed, and the matter stood adjourned to 23.11.2021.

23.11.2021: Arguments on withdrawal not advanced, adjourned to 22.12.2021.

22.12.2021: Arguments not advanced, adjourned to 23.12.2021.

23.12.2021: Arguments not advanced, adjourned to 04.01.2022.

04.01.2022: Arguments not advanced, adjourned to 25.01.2022.

25.01.2022: On 25.01.2022, plaintiffs filed an application under Order 6 Rule 17 CPC read with Section 151 CPC for amendment of the plaint.

25.02.2022: Reply to amendment filed; arguments fixed for 15.03.2022.

15.03.2022: Arguments on withdrawal not advanced; adjourned to 02.04.2022.

2.4.2022: The above said application of the petitioners for amendment of plaint was allowed by the learned Trial Court vide order dated 02.04.2022 (Annexure P-6) and amended plaint was taken on record. Simultaneously vide the above said order dated 02.04.2022 (Annexure P-6), application under Order 7 Rule 11 was also disposed of. Vide the said order dated 02.04.2022 (Annexure P-6), application of the petitioners under Order 23 Rule 1 CPC for withdrawal of their suit was also disposed of being infructuous as application under Order 6 Rule 17 CPC had been filed and allowed. The petitioners were directed to pay ad valorem Court fee upon the relief claimed by them.



25.05.2022: On 25.05.2022, case was fixed for payment of Court fees. However, the application for extension of time by one week for tendering the Court fees was filed by the petitioners.

08.07.2022: Reply to extension filed; part arguments heard; adjourned to 11.07.2022.

11.07.2022: Vide order dated 11.07.2022 (Annexure P-7), the said application of the petitioners for extension of time was allowed with costs of Rs.5,000/-; whereafter petitioners had filed ad valorem Court fee.

02.08.2022: On 02.08.2022, defendants No.1 and 2 had filed amended written statement (Annexure P-8) and case was adjourned to 18.10.2022.

18.10.2022: Replication not filed; adjourned to 20.12.2022.

20.12.2022: Replication not filed; last opportunity given till 09.02.2023.

09.02.2023: Replication not filed; adjourned to 02.03.2023 (last opportunity).

02.03.2023: On 02.03.2023, petitioners had filed replication (Annexure P-10), case adjourned to 11.05.2023 for issues.

11.05.2023: Issues not framed; adjourned to 11.07.2023.

11.07.2023: Issues were framed, and the matter was fixed for 29.08.2023 for plaintiffs' evidence. As per zimni orders produced by the respondents, from 29.08.2023 to 08.02.2024, no plaintiffs' witness was present.



09.04.2024: On 09.04.2024, an application for adjournment is moved on behalf of the petitioners on the ground that *“though PWs are present but their affidavits could not be prepared by learned counsel for the plaintiffs as his wife is seriously ill and hospitalized in Fortis hospital, Gurugram since 05.04.2024”*. Defendants had filed reply to the said application of the petitioners for adjournment opposing the application on the ground that despite availing several opportunities, petitioners had failed to produce any evidence. Therefore, evidence of the plaintiffs is required to be closed under Order 17 Rule 1 CPC and suit is liable to be dismissed. Accordingly vide order dated 09.04.2024, last and final opportunity was granted to the petitioners to conclude their evidence on 04.05.2024.

04.05.2024: However, on 04.05.2024, again adjournment was sought by the petitioners and the same was allowed and it was directed that the matter be listed for 04.07.2024 for plaintiffs' evidence.

04.07.2024: On 04.07.2024, plaintiffs' evidence is closed by Court order, which reads as follows:-

“Today the case is fixed for plaintiff evidence. No PW is present. Adjournment is requested which is opposed.

As per the zimni order dated 09.04.2024 last and final opportunity is granted to the plaintiffs to conclude evidence on 04.05.2024. It is made clear that advance copy of affidavits of the witnesses shall be supplied to learned counsels for the defendants. It is made clear that no further adjournment shall be granted for this purpose and plaintiffs have to conclude evidence on the date fixed.” In the last zimni



order dated 04.05.2024, evidence of plaintiff was not present Today, also no PW is present. The plaintiff has already availed sufficient effective opportunities to produce and conclude, despite that plaintiff failed to conclude the evidence. In view of facts and circumstances, the evidence of plaintiff is closed by Court order.

Now to come up on 05.08.2024 for evidence of defendants.”

05.08.2024: On 05.08.2024, evidence of the defendants is also closed.

21.08.2024: CR No. 4718 of 2024 is filed by the petitioners before this Court challenging the order dated 04.07.2024.

22.08.2024: The said Civil revision is withdrawn with liberty to move an appropriate application before the Trial Court. It is observed that maintainability of such application to be considered by Ld. Trial Court.

09.09.2024: Petitioners filed instant application under Section 151 CPC for recalling of order dated 04.07.2024 and seeking permission to the plaintiffs to adduce evidence. Another application was also filed for sending the file to District Judge for transfer of suit to appropriate Court. Vide order dated 09.09.2024, reference is made to the Court of District Judge, Gurugram with a request to transfer the same and parties were directed to appear before the District Judge on 21.10.2024.

21.10.2024: Case received by assignment; adjourned to 19.12.2024 for reply to recall application.



19.12.2024: On 19.12.2024, reply is filed by the respondents to application under Section 151 CPC filed by the petitioners for recalling of order dated 04.07.2024.

27.03.2025: Arguments on recall application not advanced; adjourned to 06.05.2025.

06.05.2025: Arguments not advanced; adjourned to 17.05.2025.

17.05.2025: Part arguments heard; adjourned to 19.05.2025.

27.05.2025: On 27.05.2025, vide impugned order, application filed by the petitioners for recalling of order dated 04.07.2024 has been dismissed.

01.07.2025: Before the trial court, Application for preponement filed by Defendants No.1 and 2. Notice issued for 18.07.2025.

18.07.2025: Notice not issued by Ahlmad. Notice issued for 12.08.2025.

12.08.2025: Adjournment sought by plaintiff, adjourned for 12.08.2025 for final arguments. Last opportunity.

28.08.2025: Case fixed for final arguments, arguments not advanced. Adjourned to 04.09.2025 for final arguments. Last opportunity granted.

02.09.2025: CR No. 6122 of 2025 filed before this Hon'ble Court challenging order dated 27.05.2025.

13. It is my considered view that the present Civil Revision Petition is not maintainable inasmuch as the order dated 04.07.2024, whereby the learned Trial Court closed the evidence of the petitioners, has already attained finality. The petitioners had earlier challenged the said order by filing CR No. 4718 of 2024 before this Court, wherein this



Court, vide order dated 22.08.2024, had declined to interfere and the revision petition was withdrawn by the petitioners. Having elected to withdraw the earlier revision, the petitioners cannot be permitted to re-agitate the very same grievance under the garb of the present petition.

14. It is a settled principle of law that once an order has been tested before a superior Court and the Court has declined to interfere, the same attains finality and cannot be reopened indirectly through subsequent proceedings. The order dated 27.05.2025 impugned in the present revision is merely consequential to the closure of evidence dated 04.07.2024. In absence of setting aside the foundational order dated 04.07.2024, which stands affirmed, no interference can be sought at this stage.

15. The above view is fortified from the fact that dismissal of recalling furnishes no fresh cause of action to the petitioner. The attempt of the petitioners to revive their right to lead evidence by challenging the dismissal of the recall application is barred by the doctrine of estoppel. The principle being that what cannot be done directly, cannot be permitted to be done indirectly. Once the issue of closure of evidence has been adjudicated upon and accepted by withdrawal of CR. No. 4718 of 2024, the present revision is nothing but an indirect challenge to the same order and therefore not maintainable.

16. Thus, the filing of the present petition on the same cause of action amounts to abuse of the process of law and multiplicity of proceedings. The petitioners, having failed to secure relief earlier, cannot



be allowed a second innings merely by styling the challenge as one directed against the order dated 27.05.2025, which in substance reaffirms the closure of evidence ordered on 04.07.2024.

17. It has further been brought to the notice of this court that even till the closure of their evidence on 04.07.2024 or till date, the petitioners had not filed the mandatory list of witnesses under Order 16 Rule 1 CPC, nor had the plaintiff filed his own affidavit in examination-in-chief. These are elementary steps required for commencement of evidence, and failure to undertake even the initial compliance shows that the petitioners never intended to conclude their evidence but were only seeking to protract the trial.

18. Even no explanation has been coming forth from the petitioners for non-production of their evidence. The conduct of the petitioners, as amply demonstrated above in the chronological list of dates and events, clearly demonstrates lack of bona fides. Despite repeated opportunities granted, no explanation was furnished for their failure to lead evidence on several crucial dates. In particular, on 04.05.2024, when the matter was fixed as a last opportunity for plaintiff's evidence, neither any witness was produced nor any cogent reason was placed on record for such default. This omission reflects a deliberate attempt to delay the proceedings rather than prosecute the case.



19. The petitioners have further failed to disclose certain material relevant facts to this Court in respect of the proceedings before the Trial Court. By way of example:

a. The order dated 14.12.2023 whereby the matter was adjourned for non-production of plaintiff witness;

b. The fact that defendant evidence stood closed on 05.08.2024 and the matter was adjourned for final argument and subsequently on 09.09.2024 the application was filed for recalling order dated 04.07.2024;

c. The case was fixed for final argument on 12.08.2025 and after a delay of 90 days the present civil revision has been filed. Thereafter on 04.09.2025, the petitioners took adjournment for arguments.

20. Such suppression of the true and complete sequence of proceedings disentitles the petitioners from invoking the discretionary jurisdiction of this Court under Article 227 of the Constitution or Section 115 CPC. This Court and the Hon'ble Supreme Court have repeatedly held that a litigant who conceals or distorts material facts is not entitled to any relief in equity. The above facts clearly established that the petitioner is deliberately making a concerted effort to delay the trial. The provisions of law cannot be permitted to be misused in this manner.

21. As regards argument of the petitioners regarding the objection pertaining to pecuniary jurisdiction, it is to be noted that the plea of pecuniary jurisdiction has been raised by the petitioners as an afterthought only when their right to lead evidence had already been



closed. At no stage during the proceedings before the Trial Court, up to and including 05.08.2024 when the defendants' evidence was also closed, was any such objection taken. Significantly, even in the earlier round of litigation, namely CR No. 4718 of 2024 before this Hon'ble Court, no plea regarding lack of pecuniary jurisdiction was ever raised. The belated introduction of this ground after closure of evidence in recall application only reflects mala fide intent to delay and derail the proceedings rather than to prosecute the suit bona fide. Such conduct disentitles the petitioners to any equitable relief.

22. In any event, the plea of pecuniary jurisdiction is not maintainable against the order dated 4.7.2024. The impugned order dated 04.07.2024 is not an adjudication on merits but merely a procedural consequence flowing from the petitioners' repeated defaults in leading evidence. The said order was passed solely as a result of the petitioners' non-compliance with the order dated 09.04.2024, wherein the Trial Court had granted a last and final opportunity to produce evidence. Thus, the closure of evidence was attributable only to the petitioners' own lapses and cannot be linked to any issue of jurisdiction. Thus, the belated plea sought to be raised by the petitioners regarding pecuniary jurisdiction is wholly untenable and not maintainable in the present proceedings.

23. At no stage during the pendency of the suit, nor even in the earlier revision petition CR No. 4718 of 2024 before this Hon'ble Court, did the petitioners raise any objection regarding pecuniary competence

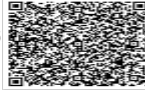


of the learned Trial Court. Having failed to raise such objection at the appropriate stage, and with the order dated 04.07.2024 having attained finality, the petitioners cannot now be permitted to invoke the ground of jurisdiction as a backdoor attempt to reopen what stands concluded.

24. This Court has consistently held that once evidence is closed due to repeated defaults and opportunities, such procedural orders cannot be assailed on extraneous grounds. Needless to say, if the objection with regard to pecuniary jurisdiction was available to the petitioners, the same ought to have been raised by them in the very first instance on 04.07.2024; or even on the next date of hearing on 05.08.2024; or even before this Court in CR No. 4718 of 2024. It has been raised for the first time only in the present application under Section 151 CPC seeking recall of the order dated 04.07.2024. Even otherwise, conduct of the petitioners is writ large on the record of the case.

25. The relevant findings of the learned Civil Judge, Gurugram are contained in para 10 and 11 of the impugned order dated 27.05.2025, which read as under: -

“10. Hence, for four opportunities, no plaintiff witnesses were present and only on the fifth opportunity the plaintiff witnesses were present, but the Ld. Counsel for the Plaintiffs and an application for adjournment was moved stating that the Ld. Counsel for the Plaintiffs was not available as his wife was hospitalized, due to which the court gave an adjournment, however, in the order dated



09.04.2024 the court clarified that advance copy of the affidavits be supplied and that the evidence of the plaintiffs would be closed on the next date of hearing. Despite the said categorical order, no plaintiffs' witnesses were even present on the next date of hearing i.e. 04.05.2024 and the case was fixed for 04.07.2024 and even on the said date, no plaintiff witnesses were present and there was nothing on record to show that the advance copy of the affidavit has been supplied to the opposite party. As per the Ld. counsel for the plaintiffs, he was not present in the court on the said date, however, his presence has been marked, however, merely because the presence of the counsel has been wrongly mentioned is no ground to set aside the said order, as the same could have been marked in a routine manner. It is relevant to observe here that the Ld. counsel for the plaintiff has failed to provide any reasons or justification for non-providing of the advance copy of the affidavits of the witnesses sought to be examined, before the said date, as directed by the court in the order dated 09.04.2024. Further, no application for adjournment had been moved on behalf of the plaintiffs on 04.07.2024, as had been moved on 09.04.2024.

*11. Hence, from the conduct of the plaintiffs, it is apparent that they had been seeking adjournments after adjournments at every stage of the proceedings in the case. In this regard it would be relevant to cite the judgment of titled **Gayathri Vs. M. Girish 2016(3) RCR (Civil) 942** relied upon by the Ld. Counsel for the defendants wherein the Hon'ble Apex Court held that:*

13. In the case at hand, it can indubitably be stated that the defendant-petitioner has acted in a manner to



cause colossal insult to justice and to the concept of speedy disposal of civil litigation. We are constrained to say the virus of seeking adjournment has to be controlled. The saying of Gita "Awake! Arise! Oh Partha" is apt here to be stated for guidance of trial courts."

26. In view of the above facts, no ground is made out to set aside the order dated 27.05.2025 (Annexure P-23). Hence, the present Civil Revision Petition stands **dismissed**.

27. Pending application(s), if any, also stand(s) disposed of.

08.09.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

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