

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No.1378 of 2015
Date of decision: 26.02.2015

Naresh and others

....Petitioners

Versus

Uttar Haryana Bijli Vitran Nigam Limited and others

...Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. Ram Darshan Yadav, Advocate for the petitioners.

G.S.Sandhawalia J.(Oral)

Challenge in the present revision petition filed under Article 227 of the Constitution of India by the petitioners-plaintiffs is to the order dated 29.1.2015 whereby the Civil Judge (Junior Division), Jhajjar has closed the evidence of the petitioners-plaintiffs on account of the fact that he had availed five effective opportunities including last opportunity of the previous date and has kept the case for evidence of the defendants. Another reason which had heavily weighed with the trial Court is that the counsel for the plaintiffs had insisted upon the fact that the witness, namely, Virender Singh, Clerk of the respondent-Nigam who had appeared in Court had not brought the record in spite of calling the same. Therefore, on account of his insistence, the Court has passed the impugned order. The witness had in his statement deposed that the relevant record was available at different stations which had been controverted by the said counsel.

Counsel for the petitioners has submitted that the suit is for compensation on account of the death caused by the negligence of the officials of the respondent-Nigam since the deceased was serving as employee on the post of Assistant Lineman and discharging his duties when the electric line was activated leading to his death. It is further submitted the plaintiffs have been diligent in proceedings with their case and have examined as many as two witnesses and record had been called for from the receipt Clerk, Virender Singh,

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Chandigarh

who had on appearance on 29.1.2015 and submitted that relevant summoned record was with the JE, Incharge, 132 KV Sub Station, Bohar and record of the salary was in the office of the XEN, Beri Division. It is submitted that for the lapse of counsel, party should not be prejudiced since official record would be necessary and factum of negligence has to be also proved as to whether adequate safeguards had been adopted while activating the electric line when the deceased was working on the same.

Keeping in view the above background, this Court is of the opinion that the rules of procedure are handmaids of justice and the Courts are to decide the matter on merits. The petitioners-plaintiffs would be adversely affected if the official record is not summoned in order to enable the plaintiffs to bring the relevant material on record to prove their case. In such circumstances, the extreme order which had been passed by the trial Court is not sustainable and is liable to be set aside.

Keeping in view the above facts and circumstances of this case, this Court is of the opinion that there is no requirement of issuing notice to the respondents as it will unnecessarily entail unnecessary expenses and delay the matter. However, it is open to the respondents to file an appropriate application for recalling of the order in case there is any concealment of fact.

Accordingly, the present revision petition is allowed. The impugned order dated 29.1.2015 passed by the Civil Judge (Junior Division), Jhajjar is set aside. The trial Court shall give necessary assistance and issue summons on filing an appropriate application by the petitioners-plaintiffs for summoning the official witnesses along with relevant record which would be required to prove their case.

26.02.2015
Pka

(G.S.SANDHAWALIA)
JUDGE