

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.3979 of 2015

Date of Decision.30.06.2015

Shri Subhash Chander and others

.....Petitioners

Versus

Shanti Prakash Jain and others

.....Respondents

Present: Mr. O.P. Goyal, Senior Advocate with
Mr. Ranjeet Singh Kang, Advocate
for the petitioners.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J. (ORAL)

1. The defendants, who were absent on a particular day for evidence suffered an order from the Court closing the evidence. At a previous occasion when this order was subject to a challenge, I had directed the trial Court to consider the matter on an application to be filed by the party for recall of witnesses. The Senior Counsel appearing on behalf of the petitioners states that such an application was moved but the trial Court has still proceeded to dismiss their application. I would find no justification in such exercise and in order to obviate any further delay in the trial process, I dispense with notice to the respondents.

2. The Senior Counsel for the petitioners states that he wants only two opportunities to conclude the trial. I asked the Senior Counsel about what is the nature of evidence he purports to produce. The Senior

Counsel responds that one will be a stamp vendor who is required to produce his register for the sale of the stamp on a particular day on which the agreement was purported to have been executed by the defendants. I would think the evidence to be necessary and would allow for such opportunity. The Court will give sufficient time to summon the witnesses through Court and then secure his presence and proceed with the continuation of trial.

3. The learned Senior Counsel also makes reference to other witnesses whom he seeks to examine. In a normal situation, I would have left it to the trial court to decide on the witnesses that the party seeks to produce and the type of documentary evidence which it wants to rely on. However, I am deviating from the normal procedure because I am dispensing with notice to the other side in view of the extraordinary remedy sought by the petitioners for recall of an order which was already passed denying to him such opportunity. It is particularly a case which was instituted in the year 2006 and when the party has had the benefit of prolonged trial, he sought to have sufficient reasons for producing the type of witnesses that he wants to rely on. The Senior Counsel says that he wants to summon Income Tax Officer to elicit the fact of whether the plaintiff had made any disclosure on payment of ₹ 35 lacs in his income tax return. It shall not be possible for a defendant to pry on the plaintiff's document by a compulsory summoning of a witness from the Income Tax Department. All that the petitioners will be entitled to, is to seek for its production from the other side and if it is not produced, press for drawing an adverse inference for non-production of the document. Beyond an adverse inference that could be drawn

under the circumstances, I will not find any justification for a compulsory summoning of witness for production of any documentary proof for the assertion which the defendants are making. The Senior Counsel would also want further time for production of handwriting expert. It appears that the defendants have already secured a handwriting expert's opinion and they would only want the opinion to be established by examining the expert. If process of examination of an expert would not go beyond proof of report which has already obtained as his opinion, there ought not to be a problem. There cannot, however, be any opportunity given to him to have a fresh process begun such as taking photographs from documents filed already in Court and compare them with admitted documents and then go with a process that would further entail delay which I am loathe to provide to the petitioners as additional opportunity.

4. The impugned order is set aside with the conditions about how the further progress in trial will go forth in the manner referred to above. With these observations, the civil revision is allowed.

(K. KANNAN)
JUDGE

June 30, 2015
Pankaj*