

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1. CR No.978 of 2015
Date of decision : 04.12.2015

Virender

...Petitioner

Versus

Smt. Ramesh Rani and another

...Respondents

2. CR No.8165 of 2015 (O&M)
Date of decision : 04.12.2015

Virender

...Petitioner

Versus

Smt. Ramesh Rani and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. Sushil Jain, Advocate for the petitioner.

Mr. Rajesh Malik, Advocate for HUDA-respondent No.2
(In CR No.978 of 2015)

Mr. Kulbhushan Sharma, Advocate
for respondent No.1
(In CR No.978 of 2015)

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of two revision petition bearing Nos.978 of 2015 against the order declining the application under Order 7 Rule 11 filed at the instance of the petitioner and 8165 of 2015 has been filed by the petitioner against the order closing the evidence by order.

Mr. Sushil Jain, learned counsel appearing on behalf of petitioner submits, that suit for declaration challenging the withdrawal of the GPA was not maintainable as remedy for the respondent-plaintiff was to seek specific performance of the agreement to sell. I am of the view that since the suit has already reached the stage of the evidence of the plaintiff, it is too late to seek a simple dismissal of the suit as it involves mixed question of fact of law.

Keeping in view the aforementioned facts, I do not intend to differ with the findings rendered while declining the application.

Accordingly revision petition No.978 of 2015 is dismissed.

Mr. Sushil Jain, Advocate has drawn the attention of this Court to the various zimni orders annexed as Annexure P-3 to P-9 in CR No.8165 of 2015 to show that bailable warrants have been issued to Sumit s/o Ramesh Kumar, Ramesh Kumar s/o Rattan Chand and Om Parkash s/o Sidhu Ram against whom the petitioner had sought summoning and already deposited diet money and the procedure as enshrined under Order 16 though had been pressed into motion but ultimately axe has fallen on the petitioner.

I have heard learned counsel for the petitioner and appraised the paper book.

The provision of Order 16 Rule 12 of the Code of Civil

Procedure prescribes the manner and mode in case summoned witness do not attend and appear in the Court. No doubt the trial Court has initiated the process by issuing the bailable warrants but thereafter has not taken further steps by issuing non-bailable warrants or any intention to serve through the concerned police station. It is not within the control of the petitioner-defendant to bring the aforementioned witness as they have been summoned as per the provision of Order 16 Rule of the Code of Civil Procedure.

I am of the view, the trial Court ought not to have closed the evidence by order in case witness despite having issued bailable warrants not appeared and should have resorted to the procedure strictly provided under Order 16 Rule 12.

Thus, in view of aforesaid findings, impugned order thus is not sustainable and is hereby set aside.

Accordingly, revision petition No.8165 of 2015 is allowed. The trial Court is directed to secure the presence of the witness in accordance with law so that the suit can be decided on the basis of the preponderance of the evidence.

04.12.2015

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**(AMIT RAWAL)
JUDGE**