

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

**CR No.2501 of 2016
Decided on: 06.04.2016**

Tarlok Singh (since deceased) through his LRs

....Petitioner

Versus

Jasjit Singh and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Naresh Prabhakar, Advocate
for the petitioner.

REKHA MITTAL, J.

Challenge in the present petition is directed against order dated 28.03.2016 passed by the Civil Judge (Junior Division), Ludhiana, allowing application of the respondent/plaintiff to examine himself as a witness.

Counsel for the petitioner has assailed the impugned order primarily on two counts. The first submission made by counsel is that as evidence of the respondent/plaintiff was closed by order of the Court on 06.01.2016, the plaintiff cannot be permitted to examine himself till such time the order closing his evidence is set-aside in appropriate proceedings. Another submission made by counsel is that the respondent did not file an application for additional evidence when on the contrary an application under Order 18 Rule 16 CPC can be maintained only when the case was pending for recording of evidence of the plaintiff.

I have heard counsel for the petitioner and perused the records.

On 06.01.2016, the order passed by the trial Court reads as follows:-

“Today case was fixed for DWs, last opportunity given but no witness has been examined. Accordingly, evidence of the defendant is closed by order. Now to come upon 14.01.2016 for rebuttal evidence.”

The error in the order dated 06.01.2016 in regard to closing of evidence of the defendant instead of plaintiff was rectified vide order dated 14.01.2016. It is an admitted position of the case that subsequent to closing of evidence of the plaintiff, the petitioner/defendant has not examined any witness.

The learned trial Court vide order dated 06.01.2016 closed evidence of the plaintiff by holding that last opportunity was given but no witness has been examined. Perusal of the order passed on the previous date i.e. 21.12.2015, reveals that there is no reference to any last opportunity. Rather the order dated 21.12.2015 states that no summoned witness is present and the case was adjourned to 06.01.2016 for evidence of the plaintiff at his responsibility with a direction that *dasti* process be taken, meaning thereby that the plaintiff had summoned witness(s) through process of the Court. The said fact gets corroborated from the previous orders dated 19.10.2015, 05.11.2015 and 10.12.2015. No doubt, the respondent has not challenged the order dated 06.01.2016 before this Court but this Court in exercise of its

supervisory jurisdiction can examine any order passed by a subordinate Court. In view of the facts noticed hereinbefore, the order passed by the trial Court closing evidence of the respondent/plaintiff is patently wrong.

The respondent/plaintiff filed the application under Order 18 Rule 16 read with Section 151 CPC and another application under Order 18 Rule 17 read with Section 151 CPC as has been referred to in the *Zimini* order dated 25.03.2016, made available by counsel for the petitioner. Once the respondent has sought his examination being a party to the suit by taking recourse to the provisions of Section 151 CPC as Order 18 Rule 17-A CPC has been deleted by way of amendment in the year 2002, it is difficult to accept contention of the petitioner that the respondent did not pray for adducing additional evidence by permitting him to examine as his own witness on the plea that he is residing abroad and has come to India in March, 2016, therefore, his evidence which is otherwise material may be allowed to be adduced.

The question of adducing additional evidence would arise only if evidence of a party has been closed either on the basis of a statement made by the party concerned or closed by an order of the Court. It is none of the plea of the petitioner that contention of the respondent that he came to India only in the month of March, 2016 is incorrect or he intentionally did not appear in the witness-box at an appropriate stage of the proceedings when the case remained pending for evidence of the respondent/plaintiff. The mere fact that the

respondent/plaintiff earlier examined his attorney is no ground to reject his prayer particularly in the circumstances that many a times, non-examination of a party as a witness invites adverse inference against him qua the facts to his personal knowledge. Analyzed from any angle, I do not find any error much less illegality in the impugned order warranting intervention.

For the foregoing reasons, the petition is dismissed *in limine*. No order as to costs.

06.04.2016
yakub

(REKHA MITTAL)
JUDGE