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IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

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Date of decision : 19.01.2016

Sadhu Ram and others

... Petitioners

Versus

Smt.Manjit Kaur

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr.Malkeet Singh, Advocate
for the petitioners.

REKHA MITTAL. J.(ORAL)

The present petition lays challenge to order dated 05.01.2016 passed by the Civil Judge (Junior Division), Fatehabad whereby evidence of the petitioners (respondents therein) in proceedings under Order 9 Rule 13 CPC filed by the respondent/defendant has been closed by order.

Counsel for the petitioners contends that the petitioners summoned Chowkidar Sri Ram for examination as a witness and despite service, he did not appear before the Court and sent request twice which was accepted by the Court below. It is further submitted that the petitioners cannot be condemned for non-appearance of the aforesaid witness despite service particularly in the circumstances that the Court itself accepted his request for adjournment. According to learned counsel, Chowkidar Sri Ram is the only witness remains to be examined by the

petitioners and in case one opportunity is allowed to the petitioners, they would ensure presence of Sri Ram, Chowkidar before the Court on the date fixed.

Perusal of the impugned order substantiates the plea of the petitioners that Chowkidar Sri Ram sent request twice which was accepted by the Court. In case the witness has failed to turn up despite service, the Court below was required to take coercive steps to ensure his presence instead of closing evidence of the petitioners for no fault attributed to them. However, counsel for the petitioners has given to understand that in case one opportunity is provided to the petitioners, they would ensure presence of Chowkidar Sri Ram on the date fixed. In view of the above, the petitioners are entitled to one opportunity to examine Chowkidar Sri Ram.

In view of what has been discussed hereinabove, the petition stands disposed of with a direction to the trial Court to provide one opportunity to the petitioners to examine Chowkidar Sri Ram, subject, however, to the condition that the petitioners would ensure presence of the witness on the date fixed. The petitioners may obtain dasti summons to facilitate and ensure presence of the witness on the date to be fixed by the trial Court.

Before parting with this order, it is pertinent to point out that the petition has been disposed of without notice to the respondent in order to save him from unnecessary inconvenience and expenses. However, the

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respondent would be at liberty to file an appropriate application in case he has any grievance to express against the order.

(REKHA MITTAL)
JUDGE

January 19, 2016.
Davinder Kumar