

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

-.-

CR 5641 of 2015 (O&M)
Date of decision: 07.12.2016

Gurjant Singh

.....Petitioner

Versus

Nasib Kaur and others

.....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. PKS Phoolka, Advocate
for the petitioner

Mr. J S Ghuman, Advocate
for respondent No. 1

-.-

Rekha Mittal, J. (Oral)

The present petition directs challenge against order dated 14.08.2015 (Annexure P1) passed by the trial Court whereby evidence of petitioner/defendant No. 5 has been closed by order of Court.

Counsel for the petitioner has submitted that the petitioner has already adduced evidence whatever was in his possession and under his control but the only witness that remains to be examined in the case is an official from the office of Sub Registrar (Tehsildar, Bathinda) along with relevant records in regard to whose summoning, application dated 23.01.2015 (Annexure P3) was filed before the trial Court and diet money for summoning of witness was deposited and thereafter process for procuring presence of the witness was also issued by the Court but despite all that, evidence of the petitioner has been closed by order without any

fault attributable to the petitioner. It is prayed that the petitioner may be provided opportunity to examine the witness concerned by securing his presence through process of the Court.

Counsel for the respondents, on the contrary, has not disputed entitlement of the petitioner to examine the witness but it is prayed that some time may be fixed for examination of the witness by the petitioner/defendant.

I have heard counsel for the parties, perused the paper book and various annexures.

Be that as it may, it is an undisputed position of the case that the petitioner/defendant started his evidence w.e.f January 2015 as evidence of the respondents/plaintiffs was concluded on 09.12.2014. Application was filed for summoning the witness and the Court permitted the petitioner to deposit diet money for summoning an official from the office of Sub Registrar (Tehsildar, Bathinda) along with relevant records pertaining to Will No. 84 dated 30.05.1988. It further appears from the *zimini* orders that the Court had ordered issuance of process for procuring presence of the witness but till date the relevant records has not been produced before the Court.

Keeping in view the principle of natural justice and fair opportunity coupled with the factum that the petitioner cannot be condemned for no fault attributable to him, the present petition stands disposed of with directions to the trial Court to procure presence of the witness concerned, in accordance with law, in order to enable the petitioner to examine the witness concerned along with relevant records. The trial

Court shall put its best effort to secure presence of the witness along with relevant records and his examination within a period of two months from the next date fixed.

Allowed in the aforesaid terms.

(Rekha Mittal)
Judge

07.12.2016
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No