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

CR-5985-2015

Date of Decision : May 31st, 2016

Jagdish Kumar and others

.... Petitioners

Versus

M/s Countrywide Promoters Private Limited

.... Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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

Present Mr. Johan Kumar, Advocate,
for the petitioners.

Mr. Adarsh Jain, Advocate,
for the respondent.

SHEKHER DHAWAN, J.

Present revision petition, by the defendants, under Article 227 of the Constitution of India for setting aside order dated 11.08.2015 [Annexure P/6] passed by learned Civil Judge [Senior Division], Faridabad whereby application of the respondent-plaintiff for not summoning the witnesses mentioned in 'List of Witnesses' as produced by the petitioners at Sr.No. III and IV i.e., Accountant/Manager of M/s Countrywide Promoters Private Limited and Accountant/Manager of M/s Shalimar has been allowed.

Learned counsel for the petitioners submitted that the petitioners-

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defendants were to lead evidence in a suit for permanent injunction having been filed by the respondent on the basis of agreement of sale dated 27.8.2006. After settlement of issues, respondent-plaintiff led the evidence and defendants filed list of witnesses who were to be summoned and the Court below passed the order for summoning of those witnesses but subsequently, an application was filed by the respondent-plaintiff for recalling of said order and to withdraw the notices issued to the Accountant/Manager of M/s Countrywide Promoters Private Limited and Accountant/Manager of M/s Shalimar Town Planners alongwith relevant record to appear as witnesses. The Court below has simply ignored the relevance of evidence to be adduced and passed the order for summoning of witnesses as detailed in the list shall be in violation of provisions of Article 20 of the Constitution, though the same has no relevancy in the present case. So, the order dated 11.08.2015 [Annexure P/6] be set-aside and the witnesses be directed to be summoned so as to conclude the evidence of the defendants.

Learned counsel for the respondent submitted that the defendants have not pleaded in the written statement that the plaintiff ever mentioned in the plaint about any sister concern and the defendants wanted to rebut the said evidence by producing documents that the said company is separate company and having separate Memorandum of Association. Otherwise also, the said record is not relevant and there is no provision to summon party to the litigation as a witness or official of a party to appear as a witness alongwith record to depose against the rights of the party.

Having considered the matter in its entirety, this Court is of the

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considered view that the Court below has decided the matter without there being any relevancy on the point in issue. It was not the question of compelling anybody to become a witness. If at all the prayer made by the applicants is regarding summoning of witnesses alongwith record and purpose thereof had been gone into by the Court at the initial stage for summoning of witnesses, or even at the stage of recalling of the order, the fact must be clear before the Court that the only purpose of defendants to summon those officials or to produce and prove the copy of bank accounts, Income Tax returns of M/s Countrywide Promoters Pvt. Limited and copy of statement of bank accounts and income tax returns of M/s Shalimar Town Planners and for production of Memorandum of Articles of the Company. Such a record could be proved by the defendants by summoning concerned officials from the respective Bank, concerned official from the Income Tax Department and official concerned from the office of Registrar of Companies by depositing their diet money. In that eventuality, it was not a case of summoning of any party to the litigation or even their representatives. But that has not been done which resulted into deciding the matter without looking at the purpose of summoning of witnesses. Needless to say that the official witnesses are to be summoned as per order of the Court while moving separate application and at that stage, the Court is to look into the nature of evidence to be led by summoning such official witnesses and only thereafter the same is to be allowed. This point could be looked into at the time of passing of order for summoning of witnesses and passing of order of deposit of diet money. But at any rate, even if at a subsequent stage, this fact comes to the knowledge of the Court that the said

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order requires recalling of the order, that can certainly be done by exercising inherent powers. Such a view as taken by Co-ordinate Bench of this Court in **Santosh Kumar Berry Vs. Nirmala Devi and others, 2013 (1) PLR 404.**

In view of the above, the present petition is disposed of with the direction that the petitioner-defendants shall move appropriate application before the Court below for summoning of official witnesses from the concerned departments after depositing the required diet money and the same shall be disposed of in accordance with law.

(SHEKHER DHAWAN)
JUDGE

May 31st, 2016
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