

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

CR No.6732 of 2016
Date of decision : 06.10.2016

Jasbir Singh

...Petitioner

Versus

Amar Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Sandeep Arora, Advocate for the petitioner.

AMIT RAWAL, J. (Oral)

The petitioner-plaintiff is aggrieved of the impugned order, whereby the evidence has been closed by order.

Mr. Sandeep Arora, learned counsel appearing on behalf of petitioner-plaintiff submits that as per the impugned order reproduced hereinbelow:

“Today the case is fixed for plaintiff evidence subject to last opportunity. Bailable warrants issued against Gram Panchayat received back served. PW4 Sukhwinder Singh Superintendent Panchayat Samiti has been examined completely. Bailable warrant issued to Jaswinder Singh received back served through family member. However, he has not appeared in the Court. Even Bhupinder Kaur has not be served through bailable warrants. Perusal of the case file reveals that plaintiff failed to conclude evidence

despite taking more than 25 effective opportunities. Issues in this case were framed on 22.2.2012 since then case is lingering on for plaintiff evidence. Perusal of zimni order reveals nonailable warrants were issued against witnesses who have failed to turn up in this case. Vide order dated 20.7.2016 plaintiff has been directed to conclude his evidence within 2 dates and he has given liberty to take dasti summon of the witnesses. Today is the second date since passing of order dated 20.7.2016 but plaintiff has again failed to conclude evidence. Resultantly, no ground is made out to adjourn the case once again for plaintiff evidence and the same stands closed by order. To come up on 2.9.2016 for defendant evidence list of witnesses, PF, DM be filed within three days.

Sd/- (Dazy Bangarh)

CJJD/18.8.2016”

PW4 Sukhwinder Singh Superintendent Panchayat Samiti and other witness namely Bhupinder Kaur were summoned throughailable warrants but they did not appear. Court should have resorted to the provisions of Order 16 Rule 12 of the Code of Civil Procedure instead of closing the evidence.

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

There is order of 20.07.2016, whereby application of the defendants for passing the order under Order 17 Rule 3 of CPC was dismissed and the Court noticed that plaintiff had been taking all possible steps in law for examining witnesses. PW's Darshan Singh and Bhupinder Kaur have already suffered statement on 19.02.2015 on oath but the Court noticed that it was without oath.

Application aforementioned as noticed above was dismissed and thereafter the summons issued to PWs Bhupinder Kaur and Darshan Singh have received back refused/lapta. Court had passed the order dated 01.08.2016, whereby bailable warrant to them has been issued for 18.08.2016, which reads thus:-

“Summons to PW Bhupinder Kaur and Darshan Singh are received back refused/lapata. But they are not come present. As such they are ordered to be summoned through bailable warrants in the sum of Rs.5000/- with one surety in the like amount. Remaining PWs be summoned for 18.08.2016 subject to last opportunity. Dasti summons be taken if so desired.

*Sd/- (Dazy Bangarh)
CJJD/1.8.2016”*

Once Court has noticed this fact, though could not be served through bailable warrants, remedy is as per the provisions noticed above but not by closing the evidence and putting blame on the plaintiff.

Accordingly, order under challenge is set aside. Revision petition is accordingly, allowed.

Court is directed to resort to the aforementioned provisions of law as it is not within the control of the plaintiff to secure the presence of the aforementioned witnesses as they were bound down.

06.10.2016

pawan

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No