217 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIARH

CR-6568-2014(O&M)
Date of decision :30.09.2016

SANTRA .....Petitioner

VS

CHAND SINGH AND ORS .....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present : Mr. Sanjiv Gupta, Advocate
for the petitioner(s).

RAJ MOHAN SINGH, J.

In this revision petition, petitioner has assailed order dated 08.09.2014 passed by Civil Judge (Senior Division), Rewari vide which plaintiff-petitioner was directed to appear in person.

At the time of issuance of notice of motion, following order was passed on 25.09.2014 :-

> *"The petitioner is aggrieved against the order dated 08.09.2014 directing her to appear in person on the date fixed by the Court.*
>
> *It is submitted that there is no prayer in the application Annexure P-1, yet the Court asked the petitioner/plaintiff to be personally present in the Court without disclosing any reason for that. The agitation of the petitioner is that she is resident of Narnaul, 85 years of age and is being represented by*

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2016.10.04 12:41
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a duly appointed Advocate, therefore, there was no occasion for the Court to call the petitioner to appear in person.

Notice of Motion for 13.10.2014.

Till then, operation of the impugned order shall remain stayed."

Thereafter, respondent Nos. 1 and 2 were proceeded against ex parte after lawful service vide order dated 12.01.2015. Due to some discrepancy viz-a-viz, name of the Advocate for respondent No. 3, it was clarified that respondent No. 3 was served through Sh. Ranbir Singh, Advocate, District Courts, Rewari vide order dated 11.12.2015.

As per office report, despite service even respondent No. 3 did not come present. Since there is no representation on behalf of the respondents, this Court proceeded to hear the arguments of learned counsel for the petitioner.

Petitioner, Santra Devi filed a suit for declaration to the effect that she is owner in possession of the suit property and the decree dated 16.11.1998 passed in Civil Suit No. 387 of 1998 titled as "Data Ram Vs. Santra etc." is illegal.

In the present case, both the parties have already led evidence. Petitioner filed an application on 16.04.2014 when evidence of the defendants was in progress to pass an appropriate order for searching the document filed in the

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previous Suit No. 387 of 1998. It was alleged by the defendants that after inspection of the record, they came to know that the written statement filed and statement of the parties made in Civil Suit No. 387 of 1998, were missing from the original record. As per report of the Copying Agency, it was reported that there was neither written statement nor the statements and power of attorney on record.

Learned counsel submitted that though, the trial Court was competent to summon the plaintiff at this stage but a lawful exercise was required to be done in consonance with Order 16 Rule 20 and 21 CPC. Perusal of the impugned order reveals that order is totally non-speaking in respect of mandatory requirement of law. In the application for searching the documents, there was no prayer for summoning the plaintiff in person who is now aged about 87 years. She was duly represented by an Advocate and therefore, there was no occasion before the trial Court to summon the plaintiff without proper procedure.

At this stage, this Court is not in a position to form concrete opinion with regard to missing document (if any), but certainly Court cannot go into the question without following due procedure.

At this stage, I find that the impugned order dated

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08.09.2014 is totally non-speaking and un-sustainable in law. The same is accordingly quashed . However, liberty is given to the trial Court to pass afresh order in accordance with law.

Disposed of.

(**RAJ MOHAN SINGH)**
JUDGE

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Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No

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