

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.7500 of 2016 (O&M)

Date of decision:09.11.2016

Urvinder Singh

... Petitioner

Vs.

Canara Bank and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Jasmeet Singh Ghuman, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

Learned counsel for the petitioner submits that this Court vide order dated 11.03.2016 passed in CR No.1849 of 2016 had set aside the impugned orders dated 26.10.2015 and 04.02.2016, whereby, his evidence was closed by order and an application for recalling of the order, was dismissed, subject to payment of costs of Rs.5,000/-.

He has drawn the attention of this Court to the zimni orders passed after 11.03.2016 extracted at page 4 to 6 of the paper book which read thus:-

29.03.2016

“Order of the Hon'ble Punjab and Haryana High Court received in which the Hon'ble Punjab and Haryana High Court allowed the application filed by the plaintiff subjected to cost of Rs.5,000/- Cost paid to legal aid. Case is adjourned to

28.04.2016 for Pws.”

28.04.2016

“No PW is present. Summons issued to PW concerned Clerk, Tehsildar, Bathinda received back with the report of incomplete address. As such complete address of said witness be filed within a week and thereafter notice to said PW be issued for 24.05.2016. Remaining PWs be also summoned for the date fixed.”

24.05.2016

“File received by transfer. It be registered. PW-1 is present and examined in chief by way of affidavit and cross deferred at request of counsel for defendant. He is bound down for next date. No other PW is present. Case is adjourned to 11.08.2016 for cross examination and remaining plaintiff evidence. Examined Pws be summoned throughailable warrants for 11.08.2016.”

11.08.2016

“Office report seen. It has come to my notice that vide order dated 11.03.2016, Hon'ble High Court granted one effective opportunity to conclude evidence after imposing costs but two opportunities have already been availed by him. Now he is directed to conclude his evidence.

At this stage, plaintiff tendered Ex.P1 to Ex.P12 and has closed his evidence. Now case is adjourned to 12.08.2016,

defendants are granted opportunity to cross examine plaintiff if they want to cross examine him.”

12.08.2016

“No plaintiff evidence is present. File be taken up again after lunch for further proceedings.”

12.08.2016

“File taken up after lunch. Ld. Counsel for defendants No.4 and 5 has moved an application for ordering affidavit tendered on 24.05.2016 as null and void in plaintiff evidence. Copy supplied. Its reply by filed on 22.08.2016.”

On perusal of the aforementioned orders, it is evident that the summons have been issued to the concerned Clerk and Tehsildar, Bathinda but the same have been received back unserved with the report of incomplete address.

The plaintiff did not appear for cross-examination. Hence, the application moved by the defendant for ordering affidavit of the plaintiff tendered on 24.05.2016 was in consonance with the directions contained in the order dated 11.03.2016.

He submits that it is the plaintiff, who offered himself for cross-examination and one Clerk from the office of Tehsildar have to be examined in a suit for declaration and the diet money of the aforementioned official witnesses has already been deposited.

I am of the view that the plaintiff is not willing in pursuing the

matter diligently and for that purpose I intend to impose costs of ₹10,000/-.
The aforementioned witnesses shall be examined by the petitioner by taking the aid of the provisions of Order 16 Rule 1A of the Code of Civil Procedure by offering the plaintiff for cross-examination in accordance with law, failing which, the order under challenge shall be liable to be upheld. The costs shall be a condition precedent.

It is a matter of record that the bailable warrants of the concerned witness have been issued and the Court is initiating the proceedings under Order 16 Rule 12 CPC.

Accordingly, the revision petition stands allowed.

(AMIT RAWAL)
JUDGE

November 09, 2016
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No