

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

Civil Revision No.8406 of 2016

Date of decision: December 26, 2016

Prem Nath Gupta and another

...Petitioners

Versus

Ramesh Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Ajay Jain, Advocate for the petitioner.

Rajan Gupta, J.

Present revision petition is directed against the order dated 09.12.2016, passed by Civil Judge (Junior Division), Narnaul, whereby it has rejected application for review of order dated 21.11.2016, passed by the same court directing a witness from Hyderabad to appear before the court.

Order has been challenged mainly on the ground that Order 16 Rule 19 does not permit summoning of a witness from a distance beyond 500 kilometers. Reliance has been placed on judgment reported as ***Mangal Singh and another Vs. Piara Lal and another, 1971 PLR 531.***

I have heard learned counsel for the petitioner and given careful thought to the facts of the case.

It appears, a civil suit was preferred by the respondent no.1/ plaintiff Ramesh Kumar. During pendency of proceedings, application

moved by the plaintiff for leading additional evidence of a witness, who is Record Keeper of Nizam Institute of Medical Science, Hyderabad, was allowed, as no objection was given by the defendants. Trial court had to resort to coercive process to secure presence of the said witness, as his evidence was found to be material for just decision of the case. It, thus, issuedailable warrants and allowed the witness to travel by air to appear before the court at Narnaul. Petitioner has posed no challenge to the coercive process. However, he is aggrieved by the order passed under Order 16 Rule 19 CPC. Plea of the counsel for the petitioner is that no process can be issued for appearance of a witness if there is no direct airlink between place where the witness resides and the place where the court is situated.

I find no merit in this plea. In the proviso to the Order 16 Rule 19 CPC, it has been laid down that where there is air transport available between the two places, the witness is allowed to attend in person. In the instant case, there is no direct airlink between Hyderabad and Narnaul. However, there is an airport at New Delhi and Narnaul is easily accessible from there. It appears, legislative intent while amending Order 16 Rule 19 and adding proviso was to expand the scope of the provision. The proviso has to be interpreted liberally in order to achieve the objective, for which it was enacted. The proviso enables the court to summon a witness from a distance beyond 500 kilometers, if there is airlink between the two places. If constricted view is taken, objective of the amendment whereby proviso was included in Order 16 Rule 19 CPC would be defeated. The judgment in *Mangal Singh's case (supra)* is not

applicable to the facts of the instant case as that case pertains to a period before 1978 amendment. Besides, instead of challenging order dated 21.11.2016, petitioners preferred a review petition before the same court. The court found that same was not maintainable. I find no infirmity with this observation. The revision petition is, thus, without any merit and is hereby dismissed.

(RAJAN GUPTA)
JUDGE

December 26, 2016
'Rajpal'

Whether speaking / reasoned	Yes / No
Whether Reportable:	Yes / No