

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

-.-

CR 8688 of 2016
Date of decision: 22.12.2016

Ganesh Behl and others

..... Petitioners

Versus

Onkar Nath and others

..... Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Sharad Mehra, Advocate
for the petitioner

-.-

Rekha Mittal, J. (Oral)

The present petition directs challenge against order dated 20.10.2016 (Annexure P1) whereby application filed by the petitioners/plaintiffs for recalling order dated 09.09.2016 closing their evidence has been dismissed.

Counsel for the petitioners would submit that the petitioners summoned a witness from the office of Sub Registrar, Amritsar for proving certain records with regard to registration of sale deeds. The witness failed to appear in the Court despite service and as a consequence, his presence was sought to be secured through bailable warrants. Later, the Court made an order for issuance of dasti process for service of the witness despite issuance of bailable warrants on an earlier occasion. The Court, in place of resorting to the procedure laid down under Order XVI Rule 10 of the Code of Civil Procedure (in short, CPC) closed evidence of the petitioners vide

order dated 09.09.2016 without any fault attributable to the petitioners. It is further submitted that despite noticing all these facts in the impugned order, the Court did not follow the prescribed procedure for securing presence of the witness through process recognized in law, therefore, the impugned order may be set aside with a direction to the Court below to procure presence of the witness along with relevant records.

I have heard counsel for the petitioners and perused the paper book particularly the order impugned.

A plain reading of the operative part of the impugned order bears testimony to the fact that the witness concerned was sought to be served through bailable warrants at one point of time but later the Court, for the reasons best known, gave up its effort to secure presence of the witness, in accordance with law. As the Court could not secure presence of the witness despite issuance of bailable warrants, there was no possibility of ensuring presence of the witness by the petitioners, by obtaining dasti process. In the given facts and circumstances, the Court should have followed the coercive process by invoking the relevant provisions of CPC for securing presence of the witness. Taking into consideration the facts and circumstances of the instant case, impugned order cannot be allowed to sustain and accordingly set aside. The Trial Court is directed to procure presence of the witness, in accordance with law so that the petitioners get fair opportunity to prove their case.

Before parting with the order, it is clarified that the instant petition has been disposed of without notice to the respondents in order to avoid inconvenience and incurring expenditure by them. However, if the

respondents have any grievance to express, they shall be at liberty to file an appropriate application before this Court.

(Rekha Mittal)
Judge

22.12.2016
mohan bimbra

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No