

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

CR No.2221 of 2016

Date of Decision: 17.08.2017

Arya Pratinidhi Sabha Punjab Jalandhar

.....Petitioner

Vs

Arya Pratinidhi Sabha Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sudhi Pruthi, Advocate
for the petitioner.

Mr. P.K. Chugh, Advocate
for the respondent.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has challenged the order dated 21.03.2016 passed by Civil Judge (Junior Division), Hisar, whereby evidence of the petitioner/defendant was closed by order of the Court.

[2]. The evidence of the plaintiff was closed on 30.01.2016 and the case was adjourned to 20.02.2016 for evidence of the defendant at his own responsibility. Even before the adjourned date i.e. 20.02.2016, defendant/petitioner filed an application for summoning of the witnesses by process of the Court. On that application, necessary expenses were allowed by the Court to be deposited by the petitioner.

[3]. The perusal of the order dated 20.02.2016 reveals that

no DW was present. The case was adjourned to 25.02.2016. Ahlmad was directed to issue a summon for the date fixed i.e. 08.03.2016. 08.03.2016 was declared to be holiday. The case was adjourned to 09.03.2016 for the purpose already fixed. On 09.03.2016, it was noticed by the Court that no DW was present. The summon issued to Clerk, Judicial record room was received back duly served, but he did not appear despite his personal service. Bailable warrants were issued in the sum of Rs.5000/- with one surety in the like amount for 21.03.2016. The summoned witness did not appear even on the adjourned date i.e. on 21.03.2016 and the evidence of the defendant was closed without securing presence of the summoned witness by means of coercive method.

[4]. It is a settled principle of law that in case summoned witness does not appear despite service & deposit of expenses, then the Court is obligated to secure his presence by means of coercive method under Order 16 Rule 10 CPC. Apparently, the Court has not acted in terms of Order 16 Rule 10 CPC for securing the presence of summoned witness by means of coercive method.

[5]. In view of above, I deem it appropriate to set aside the order dated 21.03.2016 passed by Civil Judge (Junior Division), Hisar. Therefore, this revision petition is allowed subject to payment of cost of Rs.10,000/- to be paid to the respondent.

Trial Court is directed to issue fresh summons to the persons for whom necessary expenditures were deposited by the defendant/petitioner on 09.02.2016. In the event of non-appearance of the witnesses, the Court would be at liberty to proceed in accordance with law. The payment of cost shall be the condition precedent for granting aforesaid indulgence by the trial Court.

August 17, 2017.

Prince

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No