

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

C.R. No.3382 of 2017

Date of Decision:- 10.05.2017

State of Punjab and another

....Petitioners

vs.

Jatinder Mohan Garg

....Respondent

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. S.S. Chandumajra, Addl.A.G., Punjab,
for the petitioners.

DAYA CHAUDHARY, J. (Oral)

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 13.12.2016 (Annexure P-1) passed by the Civil Judge, (Sr. Division), Mansa whereby the evidence of the defendants-petitioners has been closed by Court order.

Briefly, the facts of the case, as made out in the present revision petition, are that the plaintiff-respondent filed a suit for declaration. After issuance of notice in the suit, petitioner-defendants filed written statement. Petitioners wanted to examine themselves as witnesses as well as two more witnesses, namely, Sh. Surinder Singh Manshahia (Notary Public) and Sh. Harbax Singh Mander (Handwriting Expert). He deposited diet money and other expenses to prove the attestation and execution of the affidavit dated

28.9.2011 of respondent-plaintiff to procure the presence of witness namely, Sh. Surinder Singh Manshahia who attested the alleged affidavit as Notary Public as well as other witness, namely, Sh. Harbax Singh Mander Handwriting Expert to prove his signatures on the affidavit. Aforesaid Handwriting Expert appeared in the Court to give his evidence and submitted his analysis report, whereas, other witness, namely, Sh. Surinder Singh Manshahia did not appear in the Court on 9.9.2016. Thereafter again, he was summoned on 6.12.2016 and case was adjourned for 13.12.2016. Last opportunity was granted by the trial Court to the defendants to conclude the evidence, failing which, its evidence was ordered to be closed by order. The said witness was not present and ultimately, evidence of the petitioners was closed vide order dated 13.12.2016 which has been challenged by way of filing the present revision petition.

Learned counsel for the petitioner submits that the approach of the trial Court was harsh and matter could have been heard on merits instead of closing the evidence of the party. Learned counsel also submits that interest of the petitioner has been prejudiced by passing the impugned order which has resulted into miscarriage of justice. Examination of said witness is necessary and presence of said witness namely Sh. Surinder Singh Manshahia could have been procured by the trial Court when said witness failed to appear before the trial Court as the petitioner had deposited diet money and other expenses also. Learned counsel also submits that the trial Court has failed to follow the settled law laid down in various judgments and it is the duty of the Court to enforce the attendance of the witness summoned by the party and if necessary, coercive methods could have been

adopted.

Heard arguments of learned counsel for the petitioner and have also perused the impugned order and other zimni orders on record.

Without issuing notice to the other party as it will not only cause unnecessary delay but will have to bear the expenses of litigation in approaching this Court, the case is being decided.

Facts relating to filing of suit and thereafter closing of evidence by order of the Court on 13.12.2016 are not disputed. It is also not disputed that last opportunity was granted to the petitioner-defendants to conclude its entire evidence. The impugned order has been passed by mentioning that in spite of availing many opportunities, the defendants could not conclude its entire evidence and no plausible explanation has been put forth due to which the evidence of the petitioner-defendants was closed by order.

Similar issue was involved in case titled as **Jagdev Singh Rathore vs. Punjab Agro Industries Corporation Limited, 2003 PLR 517** and **Karnail Singh vs. M/s Gurdev Singh Balwant Singh, 2002 RCR (Civil) 261**. In these cases also, the revision was filed against order of closure of evidence and it was allowed. It was held that “the attempt of the Court normally should be to decide the matter on merits rather than to close the evidence of the party at this stage of the suit unless the facts and circumstances of the case are compelling ones and defendant party has been abusing the process of law.”

In the present case, a great prejudice would be caused to the petitioners by passing of the impugned order which has resulted into miscarriage of justice as petitioners have been deprived of logical

conclusion of its remaining evidence including Examination-in-Chief of the petitioners, which is material and it may affect the ultimate decision. It is not the case that the petitioners were not present on the date of hearing but because of the reason that witnesses were not present, the evidence was closed. In the present case, the respondent had submitted an affidavit in the year 2011 but later on, it was denied when the same was relied upon by the petitioners in support of its case. The alleged affidavit is necessary to be proved by examination of both the witnesses. It is also not disputed that summoned witness Sh. Surinder Singh Manshahia has not been compelled by the Court to appear whereas not only the diet money but other expenses have also been deposited. The summons were issued to the witness by the trial Court earlier on 9.9.2016 but he did not come present and thereafter again summons were issued on 6.12.2016 to procure his presence for the next date of hearing i.e. 13.12.2016. On that day also, the witness did not appear. It was the duty of the Court to enforce the attendance of any witness through coercive methods in case it is so required. All adjournments have been given by the trial Court to secure the presence of summoned witnesses and for examination and cross-examination of the only witness namely Sh. Surinder Singh Manshahia. Order dated 6.12.2016 was wrongly typed and was modified to the extent that last and final opportunity is granted to the defendants to conclude the evidence failing which, evidence of defendants was ordered to be closed by order. Said modified order was not brought to the notice of the defendants and it came to their knowledge on the next date i.e. 13.12.2016 when its evidence was closed by order. No finding whatsoever has been recorded by the trial Court to show as to whether the

evidence of said witness is material or not.

On perusal of impugned order, it shows that no finding has been recorded as to whether bailable warrants were served upon the witnesses; the same were executed or not and whether they had chosen not to appear in the Court. In such situation, it was obligatory on the part of the trial Court to issue non-bailable warrants of their arrest or the Court should have adopted some other coercive steps by writing to the Superintendent of Police concerned to see whether warrants were executed or not. It may be appropriate to refer to a judgment of this Court in the case of **Joginder Singh vs. Smt. Manjit Kaur, 2000(2) RCR (Civil) 382 (P&H)**, wherein it has been held as under:-

"The inevitable principle that emerges from the aforesaid established principle of law is that the court must take recourse to the powers vested in the court under the codified law at the appropriate stage and keeping in view the facts and circumstances of that case. It is true that it will not be possible to formulate a strait-jacket formula but passing of adverse orders against a party in the event of default at some stage, at least would be but necessary. In other words, the court must take recourse to such powers as they are essential for achieving the ends of justice. Expeditious disposal of the suit is the very foundation of the amplified procedure prescribed in the Code for conclusion of the suit. May be, a reasonable approach in this regard would, in any

case, be highly appreciable. Even applying this concept of reasonableness in exercise of judicial powers would be fully satisfied in the present case. The said purpose is fully achieved in the present case. The court granted opportunities to the plaintiffs to lead evidence, then granted last opportunity and then finally imposed costs for adjourning the case to a date when finally evidence of the plaintiff was closed. Counsel was put at notice and so was the party i.e. the plaintiffs were also cautioned by the Court by imposition of costs and that any further default is bound to result in an adverse orders against the plaintiffs. Persistent default on the part of the plaintiff inspite of such cautions and fair approach adopted by the learned trial court left the learned trial court with no option but to pass the impugned order. I would, willingly predicate the approach adopted by the learned trial court in this case as then alone it is possible to ameliorate ways and means for expeditious disposal of the suit within the provisions of the Code and prevent prescribed procedure being rendered disfunctional."

For the reasons recorded and the law position as discussed above, the present revision petition is allowed. The impugned order dated 13.12.2016 (Annexure P-1) is set aside and the trial Court is directed to give at least two effective opportunities by giving reasonable time to the

petitioners to conclude its evidence. However, it would be in the interest of justice, in case the trial Court adopt coercive methods for getting presence of summoned witnesses in terms of Order 16 Rule 10 CPC by issuing non-bailable warrants for their presence. However, an amount of ₹ 10000/- is imposed as costs upon the petitioners, to be deposited before the trial Court.

May 10, 2017
poonam

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No