

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

CR No.3594 of 2017

Date of Decision: 24.10.2017

Dalip Kumar

...Petitioner

Versus

Bakshish Singh and another

... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ripudaman, Advocate for
Mr. Raj Kumar Narang, Advocate
for the petitioner.

Mr. Amit Choudhary, Advocate
for respondents No.1 and 2.

RAJ MOHAN SINGH, J.

[1]. Action impugned herein is the order dated 28.04.2017 passed by Civil Judge (Senior Division), Fatehabad vide which evidence of the plaintiff was closed by observing that the plaintiff could not lead evidence despite 9 opportunities including 6 last opportunities.

[2]. Plaintiff filed a suit for possession by way of specific performance.

[3]. On 23.01.2017, 14.02.2017, 28.02.2017, no evidence of the plaintiff was present and the case was adjourned for plaintiff evidence at his own responsibility and last opportunity

was observed in the order dated 28.02.2017. On 14.03.2017, PW Dalip Kumar was present and he tendered his affidavit in examination-in-chief as PW1. The case was entrusted to Court Commissioner for recording cross examination of the witness. The file was returned by the Court Commissioner along with his certificate that the cross examination of PW 1 was deferred as Court time was over. The case was adjourned to 22.03.2017 for cross examination of PW 1 and for remaining evidence of the plaintiff at his own responsibility. In the order itself, it was endorsed that the addresses of Gulshan and Deepak were incomplete and Hanuman was served. On 22.03.2017, PW 1 was present in the Court. Another witness namely Hanuman was present and he tendered his affidavit in examination-in-chief as PW 2. The case was entrusted to Court Commissioner for recording cross examination of the witnesses. The Court Commissioner returned the file after recording cross examination of PW 1 and PW 2 respectively along with his certificate. No other PW was present and the case was adjourned to 31.03.2017 for remaining evidence of the plaintiff at his own responsibility with an endorsement of last opportunity. In the order itself, it was endorsed that summons were issued to three witnesses. The summons issued to Gulshan and Deepak were not received back. However Sunil

remained unserved. On the adjourned date i.e. 31.03.2017, no PW was present and the case was adjourned to 10.04.2017 for plaintiff evidence at his own responsibility with an endorsement of last opportunity. The addresses of Gulshan and Deepak were endorsed to be incomplete and Sunil was unserved. On 10.04.2017, no PW was present. Summoned witnesses i.e. Gulshan and Deepak were allegedly refused to receive the summons, however, Sunil was served. The case was adjourned to 21.04.2017. The same status remained in respect of service of three summoned witnesses namely Deepak, Gulshan and Sunil. Gulshan and Deepak alleged to have refused the summons, however, Sunil was duly served. On the adjourned date i.e. 28.04.2017, the evidence of the plaintiff was closed by observing that it was the 9th opportunity for the plaintiff evidence.

[4]. Perusal of the interlocutory orders on record shows that the addresses of Gulshan and Deepak were initially incomplete, however, in the order dated 22.03.2017, summons issued to PWs namely Gulshan and Deepak were not received back served or otherwise. In the order dated 10.04.2017, refusal by Gulshan and Deepak was endorsed and thereafter, same endorsement was made in the order dated 21.04.2017 and the case was adjourned to 28.04.2017. On 28.04.2017, the evidence of the plaintiff was ordered to be closed.

[5]. Evidently, the process of the Court was issued for summoning the witnesses namely Deepak, Gulshan and Sunil. In the event of report of refusal, trial Court should have secured the presence of the summoned witnesses by means of adopting coercive method in terms of Order 16 Rule 10 CPC. It is true that the case was adjourned for plaintiff evidence on some occasions. The issue of proper opportunity under Order 17 Rule 1 CPC has to be appreciated in the context of conduct of the plaintiff and availability of sufficient opportunity. If the circumstances are beyond the control of the plaintiff, the Court can visualize the situation and even resort to secure the presence of the summoned witnesses by means of coercive method. The principles highlighted by the Hon'ble Apex Court in **Salem Advocate Bar Association T.N Vs. Union of India, (2005) 6 SCC 344** were interpreted that limitation of three adjournments would not apply where adjournment is to be granted on account of circumstances which are beyond the control of the party. In appropriate cases, where the case may not strictly come within the category of circumstances beyond the control of the party, the Court by resorting to the provision of higher costs/punitive costs in its discretion may grant indulgence, however, there cannot be any misplaced sympathy towards the defaulting party. Therefore, the provision is directory

in nature.

[6]. In the instant case, in the order dated 14.03.2017, as per office report, addresses of PWs Gulshan and Deepak were incomplete. As per office report in the order dated 22.03.2017, summons issued to Gulshan and Deepak were not received back served or otherwise and Sunil also remained unserved. For the first time refusal was endorsed on behalf of Gulshan and Deepak in the order dated 10.04.2017. Refusal on behalf of aforesaid Gulshan and Deepak was also recorded in the order dated 21.04.2017.

[7]. In view of aforesaid position, trial Court could have resorted to provision in terms of Order 16 Rule 10 CPC for securing the presence of the summoned witnesses by means of coercive method. Having not done so, I am of the view that the trial Court ought to have secured the presence of the summoned witnesses by process of the Court. In the event of refusal, the copy of summons ought to have been pasted on the door of the house or at some conspicuous place in compliance to Order 5 Rule 17 CPC.

[8]. In view of aforesaid facts and circumstances of the case, I deem it appropriate to set aside the impugned order dated 28.04.2017 passed by Civil Judge (Senior Division), Fatehabad and grant one opportunity to the plaintiff to complete

his evidence at his own responsibility subject to payment of cost of Rs.10,000/- to be paid to the respondents. The payment of cost shall be the condition precedent for granting indulgence by the trial Court in the aforesaid context.

24.10.2017
prince
Whether Reasoned/Speaking

Whether Reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No