

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

CR No.465 of 2017.

Date of Decision: 23.01.2017.

Ashok Yadav

....Petitioner.

VERSUS

Sunil Kumar

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Kanwal Goyal, Advocate for the petitioner.

SNEH PRASHAR, J.

The petitioner is aggrieved of the order dated 26.10.2016 passed by learned Additional Civil Judge (Senior Division), Chandigarh vide which his evidence was closed by court order.

The submissions made by Mr. Kanwal Goyal, learned counsel for the petitioner have been considered.

Learned counsel for the petitioner submits that by virtue of the impugned order although learned trial Court had allowed examination of the witness of the petitioner present in the Court on the relevant day by appointing a Court Commissioner, but simultaneously the evidence of the petitioner was closed by order. The petitioner by filing an application and depositing the required diet money and process fee etc. had summoned Clerk from the Chandigarh Police Cooperative Housing Society, Sector 51-D, Chandigarh who had received the summon for the date fixed i.e.

26.10.2016 but instead of appearing before the Court on the date fixed had

given a note on the summon that the concerned record was not available with him and was available with the Registrar, Cooperative Societies, U.T. Chandigarh. The petitioner had summoned the witness under the belief that the record was available with the Office of Chandigarh Police Cooperative Housing Society but as per the report it was available with another office. The witness though was served but he did not opt to appear before the Court. Learned counsel asserted that the record summoned was necessary for proper and complete adjudication of the case but the petitioner was given no opportunity to summon the same from the concerned office.

Indeed, from the copy of the application (Annexure-P3) filed by the petitioner, it is evident that much prior to the date fixed for evidence of the petitioner i.e. 26.10.2016, the petitioner had filed an application for summoning of concerned official from the Office of Chandigarh Police Cooperative Housing Society with record. The petitioner deposited the diet money and the said witness received the summon but made a report that the record was not available in his office and was available in some other office. Apparently, it was under a bonafide belief that the concerned official of the office which did not have the record was summoned. In such circumstances, the trial Court ought to have given atleast one opportunity to the petitioner to summon the record from the office concerned instead of closing the evidence of the petitioner by order.

To avoid further delay in disposal of the case, in my considered opinion, notice to the respondent is not required to be issued.

However, it transpires from the impugned order that already numerous opportunities including last opportunity had been availed by the petitioner for adducing his evidence, but had failed to conclude the same. In

view of the aforesaid facts through the impugned order is set aside and the instant petition is allowed and one more opportunity is given to the petitioner but that shall be subject to payment of Rs.5000/- as costs which shall be deposited with the Legal Aid Authority. For giving one effective opportunity, a date shall be fixed by learned trial Court for remaining evidence of the petitioner, who will ensure that his ocular and documentary evidence is available for being produced in evidence on the date fixed. In case no witness is present on the said date, no further opportunity shall be accorded.

(SNEH PRASHAR)
JUDGE

23.01.2017.
jitender sharma

Whether speaking/ reasoned : **Yes**

Whether Reportable : **No**