

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

**CR No.8731 of 2016
Date of Decision: 29.08.2017**

Balwinder Singh

.....Petitioner

Vs

Sukhpal Singh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sunny K. Singla , Advocate
for the petitioner.

RAJ MOHAN SINGH, J.(Oral)

[1]. As per office report, service qua respondent No.1 is complete. None has appeared on behalf of respondent No.1. Therefore, respondent No.1 is proceeded against ex parte.

[2]. While issuing notice of motion on 23.12.2016, following order was passed:-

“Counsel for the petitioner inter alia contends that evidence of the petitioner/defendant was closed by order on 15.07.2016 despite the fact that on most of the dates fixed for evidence of the defendant, the case was adjourned for their cross examination at the request of counsel opposite. It is further submitted that the petitioner filed an application on 27.11.2015 for summoning of two witnesses through process of the Court and in view of the order passed by the Court diet money was deposited on 27.11.2015. It is further submitted that after closing of evidence of the

petitioner, an application was filed for additional evidence in order to serve the same purpose which was sought to be served by summoning two witnesses for whom diet money was deposited on 27.11.2015. It is argued that the petitioner would suffer serious injury in case he is not permitted to examine the witnesses or allowed to tender into evidence the documents sought to be tendered by way of additional evidence.

Notice of motion for 27.03.2017 to respondent No.1 only.

In the meantime, pronouncement of the final order shall remain stayed.”

[3]. Plaintiff and defendant No.2 are brothers being sons of Kirpal Singh. Plaintiff/respondent filed a suit for permanent injunction, restraining the defendants/petitioners from interfering in the peaceful possession of the plaintiff and from dispossessing him from the house constructed on the suit land. Plaintiff claimed himself to be a co-sharer in exclusive possession of the suit house.

[4]. The case was contested by the defendants/petitioners. In the evidence of the defendants, defendants wanted to summon the witnesses i.e. Ahlmad of Criminal Case No.123 dated 16.11.2014 under Sections 341/323/325/506/34 IPC of the Court of Judicial Magistrate, Ist Class, Nabha along with record of case titled State Vs. Balwinder Singh and Tehal Singh,

ASI, Police Station Sadar, Patran, Tehsil Samana, District Patiala.

[5]. The application moved by the defendants/petitioners was allowed by the Court and an amount of Rs.400/- was ordered to be deposited as diet money of the witnesses vide order dated 27.11.2015. The diet money was deposited vide No.519 dated 27.11.2015. The witnesses were not served and the aforesaid witnesses could not be examined by the defendants.

[6]. Thereafter, an application was filed for additional evidence in order to serve the same persons for whom diet money was deposited on 27.11.2015. The application was rejected vide order dated 22.11.2016.

[7]. Learned counsel for the petitioner submitted that once the process of the Court was allowed in depositing the diet money for the witnesses and the witnesses did not turn up, the Court was obligated to secure the presence of the witnesses by means of coercive method under Order 16 Rule 10 CPC. The filing of subsequent application for additional evidence was nothing, but to supplement the earlier prayer, in which indulgence was granted by the trial Court by ordering deposit of diet money. The witnesses sought to be summoned were official

witnesses and in order to serve them, the process of the Court was utilized.

[8]. I have considered the matter and I am of the view that once the diet money was ordered to be deposited by the Court for summoning the official witnesses and the process was also issued against them, then the Court was obligated to secure their presence with coercive method in the event of their not turning up to depose as witnesses.

[9]. In view of above, the impugned orders are set aside. The process of the Court earlier issued be given effect by passing necessary order by the trial Court for securing the presence of the witnesses as shown in the application dated 27.11.2015 (Annexure P4). However, petitioner is burdened with costs of Rs.10,000/- to be deposited in Punjab Legal Service Authority. The payment of cost shall be the condition precedent for granting the indulgence by the trial Court in the aforesaid context. Necessary consequences to follow.

August 29, 2017.

Prince

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No