

HIGH COURT OF CHHATTISGARH, BILASPUR

WP(227) No. 31 of 2018

Mahendra Pal Singh Khurana, Son Of Shri G. S. Khurana, Aged About 49 Years, Resident Of D-36, Sector-3, Devendra Nagar, Raipur, Shop Address-29, Mahalakshmi Market, Pandri, Raipur, Chhattisgarh.

---- **Petitioner**

Versus

Prakash Lal Pamnani, Son Of Shri Brijlal Pamnani, Aged About 60 Years, Resident Of A-1, Gulmohar Vatika, Mahavir Nagar, Raipur, Tehsil & District Raipur, Chhattisgarh.

---- **Respondent**

For Petitioner : Mr. Ankur Agrawal, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

24.01.2018

Heard

1. The present petition is against the order dated 17.11.2017 whereby right to lead evidence of the defendant/petitioner was closed.
2. Learned counsel for the petitioner would submit that after one of the defendant witness was examined and was cross-examined, two witnesses were summoned through the Court. It is contended that after the summons were issued, one of the office of ICICI Bank was reported to be closed, as such, the defendant opted to examine only one witness remaining i.e. Krishna Kumar Sharma and eventually the summons was issued to Krishna Kumar Sharma, thereafter the bailable warrant was issued and the same was served to the wife of Krishna Kumar Sharma who undertook

to produce him before the Court. However, when the witness did not turn up, right to lead evidence of the defendant was closed for no fault of the defendant. Consequently, one last opportunity may be given or the presence of Krishna Kumar Sharma be procured through coercive method when despite the fact that the witness has not turned up after the notice and service of bailable warrant. He submits that in absence of right to lead evidence, the right of the defendant will be seriously prejudiced which cannot be compensated subsequently in the later stage and in the result the order dated 17.11.2017 may be set aside and one more opportunity may be granted. He further submits that the case is fixed for final argument on 25.01.2018, therefore, one opportunity may be allowed further to lead the evidence.

3. Perused the documents and the order sheets. The order sheet would reveal that the plaintiff's evidence was closed on 18.10.2016. Subsequently, the affidavit of the defence was filed and one of the witness Mahendra Pal Singh Khurana was cross-examined on 30.01.2017, thereafter, the direction was issued to procure the attendance of the witness through intervention of the Court. The noting in the order sheet shows that summons were paid on the different dates and eventually on 14.07.2017 the summons came with an endorsement that one ICICI Bank City Finance was closed and the case was fixed for 17.08.2017. On that date, the defendant made a submission that he do not want to call the witness of ICICI Bank, which has been closed and instead the other evidence of Krishna Kumar Sharma was to be adduced. The record shows that thereafter on 07.09.2017 the summons were issued to Krishna Kumar Sharma and one last opportunity was given. Thereafter, one date was also passed on 04.10.2017

and on 28.10.2017 the presence of the witness was directed to be procured by issuance of bailable warrant of Rs.500/-. A copy of the bailable warrant which is placed on record as Annexure P-4 would show that the summons was received by the wife of Krishna Kumar Sharma wherein she gave an undertaking that she would ensure the attendance of the witness on the date, however, the order sheet shows that the witness did not come on 17.11.2017 eventually the right was closed of the defence witness.

4. The entire perusal of the record would show that certain adjournments have been made at the behest of the defendant but the facts remains after summons issued to one of the witness to procure attendance and despite service of summons and bailable warrant, the witness did not appear. In the result, the defendant cannot be faulted for the same. If the witness did not appear, then the Court could have procured the attendance of the witness through coercive method. Primarily the trial Court on finding of fact if the evidence of the defence is not allowed to be produced, under the circumstances, certainly it may affect the right of the defendant. Consequently, taking into totality of the facts of this case, I am of the opinion that one opportunity may be granted to the defendant to procure the attendance of the witness before the Court. The defendant may procure the attendance of the witness through intervention of the Court apart from the ordinary service mode. The defendant is also allowed to get the witness served through the special bailiff by dasti service. Therefore, one opportunity of evidence is granted to the defendant and thereafter, after recording the statement of the sole witness Krishna Kumar Sharma, the trial Court may proceed further.

5. With such observation, the petition stands disposed of.
6. Certified copy today.

Sd/-
(Goutam Bhaduri)
Judge

Ashok