

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.1538 of 2018
Date of Decision.08.03.2018

Jatinder Singh

.....Petitioner

Vs

Surinder Kumar and another

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amandeep Singh Manaise, Advocate
for the petitioner.

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AMIT RAWAL J.(ORAL)

The present revision petition is directed against the impugned order (Annexure P-5) whereby the evidence of the petitioner-plaintiff has been closed.

The plaintiff instituted the suit claiming following relief:-

“Suit for declaration to the effect that the sale deed dated 21.09.2006, allegedly executed by Surinder Kaur & Bahinder Pal Singh in favour of defendants is illegal, void ab initio, having no force in the eyes of law and further that the rent note dated 20.07.1996 is also a vague, illegal forged document and having no force in the eyes of law being unilateral document.”

AND

Suit for mandatory injunction directing the defendants to vacate & hand over the possession of one shop at ground floor, part of the property bearing No.135-136, situated a City Road, Hansli Bridge, Batala, District Gurdaspur as the occupation of the defendants in the said property is illegal and licence has already been revoked.

AND

Suit for permanent injunction restraining the defendants from alienating the suit property to any other person by way of mortgaging, renting, leasing, selling or in any manner whatsoever and also not to hand over the occupation of the suit property to anybody else except the plaintiff.”

The suit aforementioned was filed in 2013. However, during the pendency of the suit, though belatedly, an application for deposit of the diet money was submitted on 16.02.2018 vide Annexure P-3 and the amount of Rs.600/- was allowed to be deposited as diet money. It was, thus, duty of the Court to ensure presence of the witnesses by resorting to provisions of Order 16 Rule 12 CPC but not in the manner and mode indicated above.

In view of the aforementioned, the order under challenge is not sustainable in the eyes of law. Once the diet money has been allowed to be deposited and even summons were issued, which have been attached as Annexure P-4, it was the duty of the Court to ensure presence of the witnesses by issuing warrants or by resorting to any other remedy as envisaged under the provisions of Code of Civil Procedure but not closing the evidence. No doubt, the petitioner-plaintiff was negligent in concluding the evidence, however, in order to advance justice and prevent miscarriage of justice, I deem it appropriate to set aside the order under challenge with direction to the trial to resort to the provisions of Order 16 Rule 12 CPC in accordance with law and ensure the presence of the witnesses.

The petitioner-plaintiff is granted one effective opportunity to conclude the evidence in accordance with law subject to payment of costs of ₹5,000/- which shall be condition precedent and defray the litigation

expenses of the respondent-defendant. If the costs is not paid as directed, the order passed already by the court below shall stand restored.

The revision petition is allowed in the above terms.

(AMIT RAWAL)
JUDGE

March 08, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No