

CR No.2096 of 2018

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

CR No.2096 of 2018

Date of decision: 28.03.2018

Vikas

.....Petitioner

versus

Smt. Kamla Devi and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Navneet Singh, Advocate, for the petitioner.

RAMENDRA JAIN, J. (ORAL)

This petition has been filed under Article 227 of the Constitution of India read with Section 151 CPC for setting aside order dated 15.01.2018 (Annexure P-3) of the trial Court.

Learned counsel for the petitioner *inter alia* contends that the trial Court has illegally closed petitioner's evidence by Court order, ignoring the fact that petitioner had filed an application for summoning of two official witnesses on 19.08.2017, which was allowed. Out of them one witness appeared on 06.09.2017, but since he could not bring complete record, therefore, his examination-in-chief was deferred for 27.09.2017, on which date, his deposition was completed. Since other witness was also official witness, therefore, it was not in the hand of the petitioner to produce him in the Court, as he could have been summoned with the assistance of the trial Court only. The trial Court, in case of non-appearance of other official witness summoned by the petitioner ought to have issued his bailable warrants or summon him by adopting some coercive method. Without adopting any such exercise, evidence of the petitioner could not have been

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closed by Court order.

Having given considerable thought to the submissions made by learned counsel for the petitioner, this Court finds merit in the instant petition for the reason that un-examined witness is an official witness, which could only be summoned and produced with the assistance of the trial Court. The trial Court did not make any effort to summon him by adopting all possible modes before closing the evidence of the petitioner by Court order.

In view of discussion made above, impugned order is set aside. The trial Court is directed to ensure the presence of the un-examined witness of the defendant by adopting all means and then proceed in accordance with law.

This petition is disposed of without issuing notice to the respondents with a view to impart justice to the parties and to save the huge expenses which may be incurred by the respondents and also to avoid unnecessary delay in the adjudication of the matter. Still, if dissatisfied, the respondents may move this Court for recalling this order within six weeks from today.

March 28, 2018
R.S.

(Ramendra Jain)
Judge

Whether speaking/reasoned Yes/No

Whether reportable Yes/No.