

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

C.R. No.3047 of 2017

Date of Decision.09.01.2018

Satbir

.....Petitioner

Vs

Mariya and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Anurag Jain, Advocate
for the petitioner.

Mr. Jitender K. Sehrawat, Advocate
for respondent No.1.

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AMIT RAWAL J.(ORAL)

The petitioner is aggrieved of the impugned orders dated 23.03.2017 and 20.04.2017 whereby the evidence has been closed and application for recalling of the order closing the evidence has been dismissed.

Mr. Anurag Jain, learned counsel appearing on behalf of the petitioner-defendant submits that in suit instituted by the respondent-plaintiff, an application for summoning of the attesting witness of the Will dated 15.06.1979 namely Dayanand son of Lehri was ordered to be summoned. He took copy of the summon but refused to put thumb impression/signature. Report dated 22.03.2017 submitted by the process server is a testimony to the same but the trial Court vide order dated 23.03.2017 closed the evidence without noticing the aforementioned fact. An application moved for recalling for the order dated 23.03.2017 was moved but the same has also been rejected vide order dated 20.04.2017. He

relied upon the provisions of Order 16 Rule 10(2) of the Code of Civil Procedure to contend that the trial Court instead of closing the evidence ought to have resorted to the aforementioned provisions.

Learned counsel for the respondent-plaintiff submitted that the petitioner-defendant had taken many adjournments which have been noticed in the impugned order but did not take any steps to summon the witness. Had the due diligence been taken, the situation of closing of evidence would not have arisen, thus, urges this Court for dismissal of the revision petition with exemplary costs.

I have heard learned counsel for the parties and appraised the paper book. It would be apt to reproduce provisions of Rule 10(2) of Order 16 of Code of Civil Procedure as well as report of the summons served upon Dayanand and the order dated 22.03.2017:-

“Rule 10. Procedure where witness fails to comply with summons.-

xxxx

xxxx

xxxx

(2) Where the court sees reason to believe that such evidence or production is material, and that such person has, without lawful excuse, failed to attend or produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named, therein; and a copy or Such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.

Report dated 22.03.2017.

Sir, In town Barwala near ITI whereabouts of Dayanand son of Lehri was made, then he was available on the spot, who was served with summon on the spot. He took one copy of the summon and refused to put thumb impression/signatures upon the same. The report is submitted.

22.03.2017

Order dated 23.03.2017

No DW is present. Adjournment sought by Id. Counsel for defendants despite last opportunity. On the previous date of hearing, it was made clear that in case of failure evidence shall be deemed to be closed by court orders. As such, evidence of all defendants No.1 to 22 is closed by court orders. As such, evidence of all defendant No.1 to 22 is closed by court orders. Now to come up on 27.03.2017 for rebuttal evidence if any and for arguments.

*Sd/-
(Sudhir Kumar)
CJ (JD), Hisar, 23.03.2017”*

On conjunctive reading of the provisions, report and the impugned order, I am of the view that the trial Court ought not to have closed the evidence of the petitioner but resorted to the aforementioned provisions. The aforementioned fact has not been noticed in the impugned order despite the fact that the same was brought in the application seeking recalling of the order and reliance has been placed to para 3 of the application in this regard, which reads as under:-

“3. That the applicants-defendants had deposited PF&DM for summoning of attesting witness namely Sh. Daya Nand son of Sh. Lahri in time and served the summon for appearance on 23.3.2017. But that witness despite the service of summon did not appear before the court as per direction and unfortunately Hon'ble Court has closed the evidence of the applicants-defendants, which is against the principle of natural justice, firstly because, applicants would not provide equally effective opportunity to lead their evidence and secondly there is no fault on the part of the applicants on non appearance of said witness, because the applicants served the notice to witness.”

In view of the above, an opportunity to examine the aforementioned witness is required to be given to the petitioner-defendant in accordance with law.

Resultantly, the impugned orders dated 23.03.2017 and

20.04.2017 are set aside. The trial Court is directed to summon the witness Dayanand by resorting to the provisions as prescribed under Order 16 Rule 10 CPC and give an opportunity of leading evidence in accordance with law. The trial Court will also ensure that the petitioner-defendant under the garb of order passed by this Court does not seek unnecessary adjournments. If it is so noticed by the trial Court, the orders dated 23.03.2017 and 20.04.2017 shall come into force.

The revision petition is allowed in the above terms.

(AMIT RAWAL)
JUDGE

January 09, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable Yes