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

**CR No. 3138 of 2018(O&M)
Date of Decision: 10.05.2018**

Tajinder Singh**.....Petitioner****Vs****Janki Dass and others****.....Respondents****CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr. Vaibhav Sehgal, Advocate
for the petitioner.

RAJ MOHAN SINGH, J. (Oral)

While passing impugned order the Civil Judge (JD) Ludhiana has noticed that 20 effective opportunities were granted in a span of 19 months to the defendants to conclude their evidence. On 06.02.2017, learned counsel for the defendants suffered the statement that they will conclude their evidence by the next date, otherwise their evidence will be deemed to be closed by order. On 28.02.2017, learned counsel for defendants No. 9, 10 and 25 also suffered the same statement that they will conclude their evidence on the next date of hearing, otherwise, their evidence will be deemed to be closed by order. Similarly, on 10.03.2017, learned counsel for the defendants No. 1 to 4, 6 and 7 suffered the same statement that they will conclude their evidence on the next date of hearing, otherwise their evidence will be deemed to be closed by the

order of the Court. After noticing aforesaid statements, the Trial Court closed the evidence of the defendants vide order dated 26.04.2018.

Perusal of the record shows that on earlier occasion, Civil Revision No. 4354 of 2017 was filed by the petitioner in the High Court in which this Court was pleased to dispose of the Civil Revision petition on 14.09.2017 by passing the following order:-

“[1] Mr. Ghulam Nabi Malik, Advocate appears on behalf of respondent Nos.1 to 5.

[2] On 07.07.2017, following order was passed by this Court:-

“Learned counsel for the petitioner submits that the evidence of the plaintiff was closed after tendering documents on 27.10.2016 and the case was adjourned for 10.11.2016 for entire evidence of the defendants. On the adjourned date, the Presiding Officer was on leave and the case was further adjourned to 29.11.2016.

By referring to number of interlocutory orders passed on record, learned counsel further submits that official witnesses were sought to be served by process of Court and in the event of their non-appearance, the Court should have resorted to coercive mechanism. Even the application for secondary evidence was pending at the time of closing of evidence of the defendants by order of the Court.

Notice of motion to respondents No.1 to 5 at this stage for 14.09.2017.

Till the next date of hearing, trial Court shall adjourn the proceedings beyond the date fixed by this Court.

Liberty is granted to serve respondents No.1 to 5 through their learned counsel appearing before the trial Court”.

[3]. The evidence of the defendants was started w.e.f. 10.11.2016, but on 10.11.2016, the

Presiding Officer was on leave and the case was adjourned for 29.11.2016. Perusal of the record reveals that the official witnesses were sought to be served by process of the Court and they did not appear. It was obligatory on the part of the Court to secure the presence of summoned witnesses in terms of Order 16 Rule 10 CPC i.e. by resorting to some coercive mechanism.

[4]. Learned counsel for the respondent Nos.1 to 5 could not dispute the aforesaid factual position.

[5]. In view of above, I deem it appropriate to set aside the order dated 24.05.2017 and this revision petition is disposed with a direction to the trial Court to act in accordance with law in respect of defendants' witnesses in respect of whom the process was issued by the Court. Trial Court shall ensure early summoning of the witnesses and thereof shall proceed to decide the suit itself at the earliest."

According to the list of witnesses given by the petitioner, 8 witnesses were cited with reference to their offices. The witness appears at Sr. No. iv reads as under:-

"(iv) Record pertaining to Intkal No. 3924 of Village Dolon Kalan, Ludhiana which was filed on 04.11.2008 and decided on 30.06.2009 by the Court of Sh. Vikas Garg, IAS, Collector-cum-Deputy Commissioner."

Except the aforesaid witness, all other witnesses have been examined by defendant/petitioner. The very description of the witness has not been cited by the petitioner with reference to the name and

designation. The aforesaid witness was sought to be served by process of the Court, on which first report came that the spot for service of the witness/record keeper was locked and the whereabouts of the witness could not be known. No one was found present at the spot to witness the report. The report was submitted by process server on 17.10.2017. Second attempt was made when one Kulwant Singh reported that he was bound down for appearing in the Court of Ravneet Singh PCS, therefore, another date was prayed for. The aforesaid endorsement was made on 22.12.2017. In the third attempt, on 02.01.2018 the following endorsement was made by the process server:-

“It is requested that at the spot of service at Record Room of DC officer Ludhiana, where concerned Clerk Kulwant Singh, after reading the summon made written report on the same. Hence, this report. 22.12.2017.”

Similarly in one more attempt, the process server made the endorsement on 01.02.2018, in the following manner:-

“It is requested that for service of R.K. Revenue Court, inquiry was made about concerned clerk. Not met at the spot. Upon visiting the spot it came to light that he has gone out in connection with official work. No one made any written report at the spot. Hence, this report.”

On 26.02.2018, Process Server, Vikram Pal, reported that when he visited the office and made inquiry about the whereabouts of Clerks at the spot, he came to know orally that concerned clerk had

gone to attend Court hearing. No one made any report on the summon. Similarly, report was made by Munish Kumar, process server on 28.03.2018 that none of the person made any report on the summon when he visited the concerned office. At last on 26.04.2018 Process Server, Ravinder Singh-II reported that after reading the summons to Revenue Record Clerk, Sh. Parminder Singh, he orally told that he has given evidence in this case and the summon be sent in the name of Record Clerk in DC office.

The aforesaid proceedings undertaken by the petitioner reveals that some fishing inquiries were made and the valuable time and process of Court were misused. The indulgence granted by this Court on 14.09.2017 was intended to be misutilised in the manner as done by the petitioner. Perusal of the record would also show that on each occasion *dasti* process was also availed by the petitioner and no sincere effort was made to serve the concerned witness.

Having considered, the controversy in detail, I find that the defendant/petitioner has already led the evidence except one witness for which no indulgence can be granted for the reasons recorded herein above, I deem it appropriate to dismiss this revision petition.

Accordingly, this revision petition is dismissed.

10th May, 2018

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(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No