

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

CR No.3322 of 2017 (O&M)
Date of decision: 16th July, 2018

Manpreet Singh Chadha

... Petitioner

Versus

Harvinder Jeet Singh Sekhon & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Vikas Bahl, Senior Advocate with
Ms. Manzra Dutta, Advocate for the petitioner.

Respondent No.1 – in person.

Respondents No.2 to 6 – service dispensed with.

FATEH DEEP SINGH, J.

Plaintiff Harvinder Jeet Singh Sekhon filed against Country Colonizers Private Limited (in short, 'the Company') and other defendants, a suit for permanent injunction and during the course of proceedings, moved an application for assessment of diet money for summoning of the witnesses in which he has prayed that Manpreet Singh Chadha, one of the Directors of the defendant Company, be also summoned as witness, on which orders dated 15.09.2016 was passed by the trial Court, upon which an application for recalling of these orders for summoning this defendant as a witness was moved by the defendants.

It is by the impugned order dated 29.09.2016, the Court below dismissed the application and that is how the defendant has come up in this revision.

Going through the submissions made by Mr. Vikas Bahl, Senior Advocate assisted by Ms. Manzra Dutta, Advocate representing the petitioner and respondent No.1 appearing in person and on perusal of the records of the case.

Under Order XVI Rule 1 CPC empowers a party to file a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summons for their evidence in Court; and by virtue of Sub Rule (3), the Court may permit a party to call for such witnesses and as per Punjab, Haryana and Chandigarh amendment to the CPC, an Explanation-2 has been added to Order XVIII Rule 2 CPC, which details that the expression 'witness' in Explanation 1 shall include any party as his own witness, and it is by now a well settled proposition of law that a party is not debarred from examining its adversary as its witness on his behalf, and therefore, need not be a person from the plaintiff side and the witness may be a stranger, may be a man of his party or party himself or may be a defendant or someone from his side. Learned counsel for the revisionist could not convince this Court if there is any bar to such a recourse under the Code of Civil Procedure when

Order XVIII Rule 16 CPC ensures that the Court can take evidence of such witness in the manner so provided.

The learned Court below has given a well reasoned order that the process for summoning of defendant revisionist has been returned back on the grounds which invariably suggests that the witness is trying to evade his service and appear in the Court as directed. By virtue of Order XV Rule 4 CPC holds out that where summons have been issued for final disposal of the suit and either party fails, without sufficient cause, to produce the evidence on which he relies, the Court is well within its powers to pronounce its judgment and may adjourn the suit for production of such evidence, if it feels it necessary and therefore, casts a heavy burden on the party leading evidence to ensure that the evidence is completed at the earliest by all means. Furthermore, Order XVI Rule 10 CPC ensures that unbridled powers vest in the Court to use and resort to coercive means, where the Court sees reason to believe that such evidence or production of document is material and such person has failed to attend on to the process of the Court. The Court below has rightly held that there is no merit in the application for allowing the prayer of the defendant and hence rightly dismissed the application.

In the light of what has been detailed and discussed above,
there appears to be no merit in the present revision and thus, the same
deserves to be dismissed and is dismissed as such.

(FATEH DEEP SINGH)
JUDGE

July 16, 2018
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No