

**CM No.23543-CII of 2018 in/and
CR No.5301 of 2017**

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

**CM No.23543-CII of 2018 in/and
CR No.5301 of 2017
Date of Decision : 31.10.2018**

Mahant Baba Paramjit Singh

....Petitioner

VERSUS

Mohinder Singh & ors.

...Respondents

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

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

B.S. WALIA, JUDGE (ORAL)

1. Application has been moved by the learned Additional Civil Judge (Sr.Division), Moga seeking clarification whether to proceed with the trial of the case on day to day basis so as to dispose of the case within one year till 8.3.2019 in compliance of order dated 8.3.2018 passed in CR No.5261 of 2018 or to adjourn the case to a date beyond 21.11.2018 in terms of order dated 10.8.2017 in CR No.5301 of 2017.

2. Perusal of the orders dated 10.8.2017 and 8.3.2018 reveals the presence of Sh. N.S.Wahniwal, Advocate for Sh. Abhinav Jain, Advocate for Mahant Baba Paramjit Singh. However, despite Sh. N.S.Wahniwal, Advocate having appeared in CR No.5301 of 2017 on 10.8.2017, directions in said order to the learned trial Court to adjourn the case to a date beyond the date fixed by this Court i.e.1.12.2017 was not brought to the notice of the Hon'ble Coordinate Bench which passed order dated 8.3.2018 presumably since there is no continuation of the direction in the order dated 1.3.2018 to the learned trial Court to adjourn the

case beyond the date fixed before the High Court. On 1.3.2018, respondent Nos.1 and 4 were proceeded ex parte while notice issued to respondent No.2 was received back unserved and fresh notice was ordered for 10.9.2018 through ordinary process, registered cover and dasti as well, on filing of requisite process fee and incidental expenses. However, due to non-filing of process fee, notice could not be issued to respondent no.2. Respondent Nos.3 and 5 are reported to have expired. However, no application has been moved for impleading the LRs of deceased respondent Nos.3 and 5.

2. At this stage, learned counsel for the petitioner states that respondent Nos.2, 3 and 5 are not the contesting respondents therefore, their service be dispensed with and consequently, there is no requirement for impleading the LRs of deceased respondent Nos.3 and 5 since they never appeared before the learned trial Court.

3. Accordingly, service of respondent No.2 and impleading of LRs of respondent Nos.3 and 5 is dispensed with in view of the prayer of learned counsel for the petitioner.

4. Since the case was not taken up on 10.9.2018, the same was adjourned by order to 21.11.2018.

5. Learned counsel for the petitioner makes an oral request for preponing the date of hearing of the main case from 21.11.2018 to today i.e. 31.10.2018.

6. Oral request is accepted. The main case is taken up for hearing since respondent Nos.1 and 4 have already been proceeded ex parte.

7. Learned counsel contends that the impugned order is legally unsustainable since PW-8 had already been examined-in-chief but his cross-examination was deferred on 3.4.2017 for 11.4.2017 on request of learned counsel

for respondent-defendant and not on the request of the petitioner. Learned counsel

further contends that only one expert witness and three other witnesses i.e. one spot witness and two officials one from the Police Department and one from the Court are to be examined to bring certain documents on record and that the process fee and diet money had been deposited for the said witnesses and summons had to be issued but were not issued therefore, the petitioner cannot be faulted on that account. In any case, learned counsel submits that one effective opportunity be granted to the petitioner to conclude his evidence failing which grave prejudice would be caused to the petitioner.

8. I have considered the submission of learned counsel for the petitioner and am of the view that once the matter had been adjourned to 11.4.2017 for cross-examination of PW-8 on the request of learned counsel for the respondent-defendant, besides, the petitioner had already deposited the process fee and diet money in respect of the witnesses to be summoned and summons had not been issued by the Court then in that eventuality, the petitioner cannot be prejudiced on account of fault not attributable to him.

9. Accordingly, the impugned order is set aside. The petitioner is granted two effective opportunities to lead his entire evidence at his own risk and responsibility. The learned trial Court to proceed in accordance with law after giving a date to the petitioner to produce his evidence.

10. Revision petition allowed in aforementioned terms.

October 31, 2018
ps

(B.S. WALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No