

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

CR No.5819 of 2017(O&M)
Date of Decision: 30.11.2018

Kulvinder Kaur

... Petitioner

Vs

Narender Singh and others (deceased through LRs)

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Pawan Attri, Advocate
for the petitioner.

Mr. Vineet Chaudhary, Advocate
for respondent No.2.

RAJ MOHAN SINGH, J. (ORAL)

[1]. Petitioner has challenged the order dated 27.07.2017 passed by Civil Judge (Junior Division), Pehowa vide which the evidence of the petitioner was closed by order of the Court.

[2]. Perusal of the record would show that vide order dated 19.01.2017, official witnesses i.e. C.P. Begail, Tehsildar Jagdalpur, District Bastar (Chattisgarh) and Virender Singh, Nagar Nigam Aayukt Jagdalpur, District Bastar (Chattisgarh) were summoned throughailable warrants in the sum of Rs.5000/- each with one surety in the like amount for 20.04.2017. Though the order was to the effect that the official

witnesses were to be summoned at his own responsibility of the plaintiff, but the fact remains that the summoned witnesses were official respondents for which diet money was duly deposited. Vide subsequent order dated 25.05.2017, fresh bailable warrants were issued to the aforesaid PWs against the same condition of surety. As the Court was on leave on 20.04.2017, the case was adjourned to 13.07.2017. On the adjourned date, bailable warrants issued to the PWs namely C.P. Begail, Tehsildar Jagdalpur, District Bastar (Chattisgarh) and Virender Singh, Nagar Nigam Aayukt Jagdalpur, District Bastar (Chattisgarh) were received back unserved. Fresh bailable warrants were again issued to the aforesaid PWs in the sum of Rs.5000/- each with one surety for 27.07.2017 and the case was also adjourned for remaining evidence of the plaintiff subject to payment of costs of Rs.500/- out of which amount of Rs.200/- was to be deposited in DLSA, Pehowa and amount of Rs.300/- was to be deposited in Bar Association, Pehowa. In this way, last and final opportunity was granted to the plaintiff.

[3]. Learned counsel for the petitioner submitted that the amount of cost(s) was duly deposited in the head so specified in the aforesaid order. The case was adjourned to 27.07.2017 i.e. the date on which the impugned order came to be passed without securing the presence of summoned official witnesses

by some coercive method. Learned counsel further submitted that in case, summoned official witnesses do not come despite issuance of bailable warrants, it was obligatory on the part of the Court to secure their presence by some coercive method in terms of Order 16 Rule 10 CPC. In the event of their non-appearance, the Court was required to pass further consequential order and the evidence of the plaintiff cannot be closed on that premise.

[4]. On the other hand, learned counsel for respondent No.2 submitted that number of opportunities have already been availed by the plaintiff/petitioner and the trial is being delayed unnecessarily.

[5]. Having heard learned counsel for the parties, I am of the considered opinion that the trial Court was under legal obligation to secure presence of the summoned official witnesses by way of adopting coercive method in terms of Order 16 Rule 10 CPC.

[6]. In view of aforesaid legal position, I deem it appropriate to direct the trial Court to secure the presence of the summoned official witnesses by means of lawful process. In case, they do not come to the Court, then the Court would be at liberty to secure their presence in terms of Order 16 Rule 10 CPC. However, the trial Court shall make every sincere

endeavour to secure the presence of the summoned official witnesses and thereafter, shall proceed to decide the suit at the earliest in accordance with law.

[7]. Disposed of.

30.11.2018
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No