

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

**Civil Revision No.6474 of 2016 (O&M)
Date of Decision:28.11.2018**

Vikram

.....Petitioner

Vs

Dr. P.K. Khanna and others

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

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

Mr. Akshay Jindal, Advocate
for respondents No.1 and 2.

Mr. Harsh Bungar, Advocate
for respondents No.3 and 4.

RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged the order dated 06.08.2016 and 12.08.2016 passed by the Civil Judge (Jr. Divn.) Gurgaon dismissing the application for summoning the witness and also dismissing the application for recalling the order dated 06.08.2016.

[2]. The primary contention of the petitioner is that the witness Vijay Rastogi, Fingerprint Expert was summoned by process of the Court for which diet money was deposited under

the orders of the Court. The summoned witness did not turn up due to his treatment in the Hospital and, therefore, it was the duty of the Court to secure his presence by means of coercive method under Order 16 Rule 10 CPC. The claim of the petitioner has been contested by the respondents.

[3]. Brief facts are that the plaintiffs filed a suit for declaration with consequential relief of permanent injunction seeking declaration to the effect that sale deed dated 17.07.1989 is illegal, unlawful and is not binding upon the rights of the plaintiffs to the extent of their shares. Consequent mutations were also claimed to be illegal and were not binding upon the plaintiff. Permanent injunction was also prayed restraining the defendants from changing the nature of the property and also from alienating the suit property.

[4]. During course of proceedings, an application was filed for summoning the witnesses namely Suresh Srivastav, Satya Bhan, Advocate, Suraj Bhan Nambardar and Vijay Kumar Rastogi, Advocate Fingerprint Expert. Diet money was also deposited. As per endorsement on the application dated 15.11.2013, following recital was made:-

“Rs.1000/- be deposited as witnesses expenses at own responsibility. Sd/-
15.11.2013.”

[5]. On 06.08.2016, after issuance of process of the Court, the case was fixed for examination of the Expert. The Expert namely Naresh Kataria on behalf of the defendants appeared in the Court, but the Expert on behalf of the plaintiffs did not turn up and adjournment was sought by the learned counsel for the plaintiffs. The record revealed that the plaintiffs had already availed several opportunities, but have failed to conclude their evidence. The Court observed that no further opportunity is to be granted and the evidence of the plaintiff/petitioner was closed by order of the Court on 06.08.2016. Thereafter, plaintiff/petitioner filed an application on 06.08.2016 itself to the effect that the Expert on behalf of the plaintiff had come to the Court at 3.00 p.m. When, learned counsel for the plaintiff asked the Reader of the Court about cross-examination of the Expert, it was revealed that evidence of the plaintiff has already been closed by order of the Court. With the aforesaid pleadings, the order dated 06.08.2016 was sought to be recalled and prayer was made to adjourn the case for cross-examination of the witness as the witness was present in Court on 06.08.2016 at 3.00 p.m.

[6]. The trial Court while dealing with the aforesaid application, passed the order dated 12.08.2016 after noticing the fact that the case was fixed for cross-examination of Expert

of the plaintiff. The Expert was stated to be not well on that date as he had gone to Purbhawati Singhari Hospital at New Delhi for taking treatment. This fact was brought to the notice of the Court with a request that the witness would appear for cross-examination only after lunch session. Accordingly the witness came to the Court at 3.00 p.m. At that stage, Reader of the Court disclosed that the evidence of the plaintiff has already been closed by order of the Court.

[7]. It was observed by the trial Court that the evidence of the plaintiff started in the year 2014. On earlier occasion, an order was passed that the evidence would be deemed to be closed by order on 30.09.2015 and 13.10.2015. The rigor of the aforesaid order was also repeated in subsequent orders dated 18.07.2016 as well. On 06.08.2016, when the case was fixed for evidence of the plaintiff, the same was closed as the plaintiff had already availed several opportunities much less 49 in number. Time and again opportunities were granted to the plaintiff at the request of his counsel. The trial Court also found that the dates were given at the convenience of the parties as the examination of Expert and cross-examination by the Expert were involved. Keeping in view the hardship of the Experts of both sides convenient dates were given. The Expert appeared in the Court and took specimen signature on 04.09.2015. Thereafter, the

Expert filed his report along with affidavit dated 16.12.2015. For the cross-examination of the Expert, 18 opportunities were availed by the plaintiff or by the parties. Both the parties were even orally warned for their acts and omissions. Time and again the case was being adjourned.

[8]. Both the Experts had sought adjournments on medical ground on earlier occasions. Cross-examination of the Expert was incomplete despite more than one year. Evidence of the plaintiff was closed on 06.08.2016. In the morning, Expert and the defendant were present in Court despite having injury due to which Expert of the defendant was not in a position to stand in the Court for whole day. Health status of Expert of the defendant was not such so as to wait for whole day. On this, learned counsel for the plaintiff submitted that his Expert is undertaking treatment in some Hospital on that day and till 3.00 p.m., he will not be in a position to come to the Court. Surprisingly, no medical record from the Hospital was produced in the context of health status of Expert of the plaintiff. Owing to the antecedent behaviour of the plaintiff as per previous record, the trial Court found that the same was an act of humiliation to the Expert of the defendant, who was not in a position to stand properly in the Court on account of his medical condition. At that stage postponement of the cross-examination till 3.00 p.m. sought by

the plaintiff that too without tendering any medical record of ill health of the Expert was not construed to be a plausible explanation on behalf of the plaintiff and the application was dismissed.

[9]. Learned counsel for the petitioner vehemently submitted that once the process of the Court was issued to summon the witnesses and in the event of his non-appearance, his presence could have been secured by way of coercive method.

[10]. I have considered the submissions made by learned counsel for the parties.

[11]. In my considered opinion, the aforesaid issue does not arise in the present case as the witness had already been summoned and as per own showing of the plaintiff/petitioner, witness had appeared, but at 3:00 p.m. It is not the legal position which is required to be answered in the present case, but it is the conduct of the witness of the plaintiff, which is to be deprecated in the light of attending facts and circumstances of the case. Even though both the witnesses had availed number of opportunities, but the case has to culminate at some juncture as 49 opportunities for leading evidence were not inadequate opportunities to conclude the evidence. Expert witness of the

defendant was present in the Court, despite having ill health at the relevant time. Continued behaviour of the plaintiff not to get his witness examined and for making the Expert witness to wait till 3.00 p.m. was not conducive to the health and welfare of the witness and the said fact was taken to be a *mala fide* act on behalf of the plaintiff.

[12]. In view of attending facts and circumstances of the case, I am of the opinion that the plaintiff/petitioner has not acted in *bona fide* and diligent manner to examine his Expert witness, rather the plaintiff was involved in delaying the proceedings without any justifiable reasons. The alleged ill health of the Expert of the plaintiff could not be proved on record by means of any plausible explanation.

[13]. In view of above, the impugned orders passed by the Courts below cannot be interfered with, nor the same are suffered with any error of jurisdiction. This revision petition is devoid of merits and the same is accordingly dismissed.

November 28, 2018

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No