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

**Civil Revision No.7402 of 2015 (O&M)
Date of Decision:28.08.2018**

Mohinder Singh

.....Petitioner

Vs

Vinod Kumar and others

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

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

Mr. Karan Nehra, Advocate
for respondents No.1, 3, 4 and 6.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has challenged the orders dated 11.09.2015 and 13.10.2015 passed by the Civil Judge (Jr. Divn.) Kapurthala whereby the evidence of the petitioner/plaintiff was closed by order.

[2]. On 04.11.2015, following order was passed by this Court:-

“Learned counsel for the petitioner contends that on number of occasion PWs were present for cross examination but their cross examination was deferred for one reason or the other not attributable to the plaintiff. Thereafter, PWs stopped appearing in Court on number of dates including the last opportunity and evidence of the plaintiff was closed. Petitioner seeks one more opportunity to conclude the entire evidence including the evidence of

Clerk of State Bank of Patiala that is a cited witness for whom diet money was duly deposited but he was not summoned with the process of the Court.

Notice of motion for 02.12.2015.”

[3]. Perusal of the record would show that on 29.09.2011, PW-1 Ramesh Chander, PW-2 Veenet Gupta and PW-3 Jatinder Kumar were present and their affidavits were tendered in examination-in-chief. The cross-examination of the aforesaid witnesses was deferred at the instance of learned counsel for the defendant. On 16.01.2012, the witnesses were present, but they could not be cross-examined by the defendant. The case was accordingly adjourned.

[4]. It appears that the final and last opportunities were granted for leading the evidence by the plaintiff, but the same could not be completed for want of one reason or the other. The aforesaid three witnesses were summoned by the process of the Court by depositing diet money and they were in fact served and had appeared in their examination-in-chief. The cross-examination was deferred at the instance of the defendant.

[5]. The cross-examination of one of the aforesaid witnesses namely Jatinder Kumar was done on 25.08.2015 by the defendant. The summoned witnesses namely PW-1 Ramesh Chander and PW-2 Vineet Gupta did not appear despite service. In such a situation, the trial Court was under

obligation to adopt coercive method to secure their presence under Order 16 Rule 10 CPC.

[6]. Keeping in view the number of adjournments at the instance of plaintiff and inaction on the part of the trial Court in not securing presence of some of the served witnesses by coercive method would entail in giving one opportunity to the plaintiff to examine PW-1 Ramesh Chander and PW-2 Vineet Gupta fully at their own responsibility. Defendants would be entitled to cross-examine the witnesses also on their appearance on one date.

[7]. In view of aforesaid, this revision petition is allowed. The impugned orders dated 11.09.2015 and 13.10.2015 passed by the Civil Judge (Jr. Divn.) Kapurthala are hereby set aside, however subject to payment of costs of Rs.20,000/- to be deposited with the Registrar General of this Court and the same will be deposited in Kerala Chief Minister's Distress Relief Fund towards relief to Kerala flood victims.

[8]. The payment of costs shall be the condition precedent for granting indulgence by the trial Court in the aforesaid context.

August 28, 2018

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Whether speaking/reasoned
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/No