

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 113

CR-7276-2018

Date of decision : 18.12.2018

Nitin Jain

..... Petitioner

VERSUS

Anita Jain and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. A. K. Jindal, Advocate, for the petitioner.

None for respondent No. 1.

Mr. Rohit Kapoor, Advocate, for respondent No. 2.

Mr. Ankit Aggarwal, Advocate, for respondent No. 3.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 08.10.2018, passed by the Civil Judge (Junior Division), Gurugram (for short, the Trial Court) through which the petitioner/plaintiff has been granted last opportunity to produce his witnesses at his own responsibility

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that the petitioner filed a suit seeking therein specific performance of agreement to sell dated 30.09.2016 allegedly executed between him and respondent No. 1-Anita Jain as Power of Attorney holder of respondent No. 2-Dr. Inderjit Kaur. Mandatory injunction to direct respondent No. 3-Kendriya Vihar Apartment Welfare Association, GH-49, Sector-56, Gurugram (for short, the 'Association') to execute the conveyance deed of the property which was the subject matter of the aforesaid agreement to sell (for short, the suit property) was also sought. The Trial Court put the respondents to notice but in spite of service, respondent No. 2-Dr. Inderjit Kaur failed to put in appearance and therefore, was proceeded against ex parte. Respondents No. 1 and 3 appeared before

the Trial Court and filed their respective written statements. In its written statement respondent No. 3 had *inter alia* stated that respondent No.2-Dr. Inderjit Kaur had not contacted the officials of respondent No. 3-Association for a long time and therefore, it was not in their knowledge whether she was alive. It was further stated by respondent No. 3 that if respondent No. 2 was alive and appeared before them then they would have no grievance regarding execution of the conveyance deed of the suit property in favour of the petitioner/plaintiff. In view of the above dispute between the parties, the Trial Court framed the issues and thereafter the petitioner/plaintiff sought to lead his evidence during the course of which he sought to examine respondent No. 2; concerned official/Clerk from the office of Sub-Registrar-I, Kashmiri Gate, Delhi; concerned official/Clerk from Indian Overseas Bank Ghaziabad and concerned official/Clerk from Vijaya Bank, Vigyan Vihar, Delhi. The Trial Court issued summons to the aforesaid witnesses but even after service they failed to appear. Therefore, the Trial Court, through order dated 17.07.2018, directed the aforesaid witnesses to be summoned throughailable warrants. However, on the adjourned date the aforesaid witnesses did not appear occasioning the suit to be adjourned to 25.09.2018 on which date the Trial Court while adjourning the matter to 08.10.2018 directed the petitioner/plaintiff to explain the relevancy of examination of respondent No. 2 as his witness. On 08.10.2018 after hearing hearing counsel for the parties the Trial Court observed that there was no requirement to summon respondent No. 2 as a witness and petitioner/plaintiff was granted last opportunity to produce his other witnesses/evidence at his own responsibility.

Learned counsel for the parties have been heard.

In order to prove his case, the petitioner/plaintiff sought to produce as his witnesses respondent No. 2; concerned official/Clerk from the office of Sub-Registrar-I, Kashmiri Gate, Delhi; concerned official/Clerk from Indian Overseas Bank Ghaziabad and concerned official/Clerk from Vijaya Bank, Vigyan Vihar, Delhi. All the aforesaid witnesses were served but in spite of the same when they failed to put in appearance, the Trial Court issuedailable warrants to secure their presence to which only respondent No. 2 responded and questioned the relevance for summoning her as a witness for the petitioner/plaintiff. On her objections the Trial Court ordered that there was no need to summon respondent No. 2 as a witness of the petitioner/plaintiff. Learned counsel for the petitioner submits that once Mr. Rohit Kapoor, Advocate has put in appearance before this Court on behalf of respondent No. 2 and has also filed her *vakalatnama* in his favour it can safely be presumed that respondent No. 2 is alive and that being so, he does not press his prayer qua summoning of respondent No. 2, as his witness.

In view of the above, the impugned order regarding observations made qua respondent No. 2 needs no interference.

So far as the other three witnesses are concerned, learned counsel for the petitioner submits that once the Trial Court had summoned them throughailable warrants the Trial Court should have at least recorded a finding with regard to execution of such warrants upon them and then proceeded with the matter in accordance with law rather than observing in the impugned order that production of the aforesaid witnesses would now be

the responsibility of the petitioner/plaintiff.

Once after having been duly served the summoned witnesses did not appear and the Trial Court had sought their appearance throughailable warrants, the Trial Court should have seen to it whether theailable warrants qua them had been executed or not and then proceeded with the matter in accordance with law. There is nothing on record to even suggest that such a procedure was adopted by the Trial Court.

In view of the above, the impugned order, to the extent of granting the petitioner/plaintiff last opportunity to produce his witnesses at his own responsibility is set aside and the Trial Court is directed to first go into the issue whether theailable warrants issued by it to summon the aforesaid witnesses were executed or not and thereafter proceed to secure the presence of the said witnesses, in accordance with law.

The present petition is allowed in the above terms.

18.12.2018
shamsher

[DEEPAK SIBAL]
JUDGE

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