

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

110

CM-4161-CII-2018 in/and
CR-838-2018 (O&M)

Date of Decision:26.02.2018

Piara Singh

.....Petitioner

Versus

Amrik Singh

.....Respondent

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

Present: Mr. Pavan Malik, Advocate,
for the petitioner.

Mr. IPS Kohli, Advocate,
for the respondent-caveator.

HARI PAL VERMA, J.(Oral)

CM-4161-CII-2018

Prayer in this application under Section 151 CPC is for
preponement of date of hearing.

For the reasons stated in the application, same is allowed and
the main case which is fixed for 16.03.2018 is preponed and taken up for
hearing on board today itself.

CR-838-2018 (O&M)

Petitioner has filed the present revision petition under Article
227 of the Constitution of India, impugning the order dated 13.10.2017
(Annexure P-5), whereby the learned Civil Judge (Jr.Divn.) Chandigarh, has
closed the evidence of the plaintiff by court order.

Learned counsel for the petitioner has argued that on
18.07.2016, the trial court had directed the witness to be summoned through

available warrants and the case was fixed for plaintiff's evidence as well as

cross-examination of Mohan Lal, but as Mohan Lal was not present, therefore, he was ordered to be summoned through bailable warrants in the sum of Rs.5,000/- with one surety in the like amount for 12.09.2016. On 12.09.2016, when the case was fixed for PWs' evidence, last opportunity was granted to the plaintiff to conclude his evidence. Again on 07.12.2016, Mohan Lal did not appear and accordingly, bailable warrants were issued in the sum of Rs.5,000/- with one surety in the like amount and it was made clear that it was the last opportunity for the plaintiff's evidence. On 21.01.2017, when bailable warrants issued to Mohan Lal were not received back either served or otherwise, fresh bailable warrants were issued to Mohan Lal for 23.02.2017. On 23.02.2017 also, situation remained same. When the witness Mohan Lal did not appear on 18.04.2017, the civil court was constrained to issue non-bailable warrants against PW Mohan Lal showing its satisfaction that PW Mohan Lal is intentionally or deliberately avoiding the service of the bailable warrants and he could not be served through this process. When non-bailable warrants issued against said Mohan Lal were not received back either executed or unexecuted again on 30.05.2017, the civil court issued fresh non-bailable warrants against Mohan Lal for 01.07.2017. Even on 01.07.2017, 27.07.2017, 11.08.2017 and 25.09.2017, situation remained the same and even non-bailable warrants could not be served upon the said PW Mohan Lal.

After arguing for some time, learned counsel for the petitioner states that though there is no fault on the part of the plaintiff but he would be satisfied in case one more effective opportunity is granted to him to adduce his evidence and to produce the said witness Mohan Lal in the suit.

On the other hand, learned counsel for the respondent-caveator

states that ample opportunities have already been granted but the plaintiff was unable to adduce/complete his evidence. Therefore, no option was left with the civil court except to close his evidence. Thus, there is no illegality in the impugned order. He further states that after passing of the order dated 13.10.2017, the defendant's evidence started on 06.12.2017, defendant's evidence was closed after availing just three opportunities whereas about 40 opportunities were granted to the plaintiff.

I have heard the learned counsel for the parties.

Though it is not in dispute that the plaintiff has already been granted as many as 40 opportunities and the suit was filed in the year 2012, but still the plaintiff has not been able to complete his evidence. However, considering the fact that it is a dispute between a father and son and the fact that the plaintiff has been prevailing upon the court to summon the witness Mohan Lal against whom bailable and even non-bailable warrants were issued, this Court finds that it is beyond the control of the plaintiff to examine PW Mohan Lal. Although after such ample opportunities having been granted to the plaintiff, there is hardly any justification for this Court to grant any further opportunity, still, in the interest of justice, one more effective opportunity is granted to the plaintiff to adduce his evidence of Mohan Lal. However, this would be subject to payment of ₹5,000/- as costs to be paid by the petitioner-plaintiff to the respondent-defendant.

The revision petition stands disposed of accordingly.

February 26, 2018
seema

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No