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

**CR No.5175 of 2018(O&M)
Date of Decision: 11.09.2019**

Suresh Kumar .....Petitioner

Versus

Krishna Devi and others .....Respondents

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

Present: Ms. Supriya Garg, Advocate
for the petitioner.

Mr. S.S. Walia, Advocate
for respondents No.1, 8(a), 8(b) and 10.

Mr. M.K. Garg, Advocate
for the caveator/respondent No.9.

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RAJ MOHAN SINGH, J.

[1]. Both the parties are *ad idem* that respondent No.9 is the only contesting party. Mr. S,S, Walia, Advocate for respondents No.1, 8(a), 8(b) and 10 also assisted Mr. M.K. Garg, Advocate for the caveator/respondent No.9.

[2]. Petitioner has preferred this revision petition against the order dated 30.07.2018 passed by Additional Civil Judge (Senior Division), Phul, whereby evidence of the petitioner was closed by order of the Court.

[3]. Perusal of the impugned order would show that PW-1 Suresh Kumar was present, but he could not be cross-examined by the learned counsel for the defendants as he did not bring the summoned record. Trial Court has observed that learned counsel for the plaintiff had undertaken on the last date to produce the entire record for the date fixed, but despite that he had failed and the witness Suresh Kumar was not cross-examined due to non-production of record.

[4]. An application was filed by defendant No.9 for depositing diet money to summon the relevant record.

[5]. Perusal of the aforesaid application would show that defendants wanted to put the relevant record related to VAT Return, Sale Tax Returns, Income Tax Returns, Account Books of M/s Sneh Sales Corporation, Rampura Phul to the plaintiff during his cross-examination. The said record was in the custody of concerned departments and proprietors of M/s Sneh Sales Corporation Rampura Phul. The prayer was divided into five parts. Qua part Nos.1 to 4, request was made to summon the concerned Clerk of Sales Tax Department Rampura Phul

along with all relevant record related to M/s Sneh Sales Corporation Rampura Phul, concerned Clerk, Sales Tax Department of Ganganagar along with all relevant record related to M/s Sneh Sales Corporation, Ganganagar, concerned Clerk Income Tax Department, Bathinda along with all relevant record related to M/s Sneh Sales Corporation Rampura Phul and concerned Clerk, Income Tax Department, Ganganagar along with all relevant record related to M/s Sneh Sales Corporation, Ganganagar. In the 5th paragraph, Sneh Lata wife of Suresh Kumar was to be summoned along with account books, bill books, receipt books of M/s Sneh Sales Corporation, Rampura Phul from the year 1998-99 to 2013-14.

[6]. Perusal of the application dated 15.09.2014 would further show that four concerned Clerks of Sales Tax Department, Rampura Phul, Sales Tax Department, Ganganagar, Income Tax Department, Bathinda and Income Tax Department, Ganganagar were sought to be summoned along with relevant records. Sneh Lata was sought to be summoned only in respect of record of M/s Sneh Sales Corporation, Rampura Phul.

[7]. The said application was allowed and necessary deposits were also allowed to be made for summoning of the witnesses. In the event of non-production of relevant records by

the concerned Clerks of the Departments as shown in para Nos.1 to 4 in the application dated 15.09.2014, trial Court could have resorted to coercive method in order to secure presence of summoned witnesses. No such proceeding has been initiated by the trial Court for summoning of Saneh Lata (respondent No.11 in the present revision petition). She was served with summons in order to cross-examine the plaintiff on the basis of record of M/s Saneh Sales Corporation Rampura Phul to be produced by the plaintiff/petitioner Suresh Kumar.

[8]. Sneh Lata sought to recall the order on the ground that she was not party to the suit and the summoned record in respect of her concern would amount to interference in the privacy and confidentiality of her business/trade.

[9]. Vide order dated 21.05.2016 passed by Additional Civil Judge (Senior Division), Phul, the prayer was rejected which prompted Sneh Lata to file CR No.4346 of 2016 which was disposed of by the High Court vide order dated 06.02.2018 with a direction to Sneh Lata to appear before the trial Court along with summoned record. She was also directed to carry the record in sealed cover and produce the same before the Court and thereafter, raise the plea that the record is protected under Section 130 of the Evidence Act or any other provision. The Court also directed that if such objections are raised, the trial

Court shall consider and decide the same before proceeding further with the case.

[10]. The aforesaid order was only confined to summoning of Sneh Lata who was to produce record of M/s Sneh Sales Corporation, Rampura Phul as per application dated 15.09.2014 filed by Pawan Kumar.

[11]. Trial Court vide order dated 11.05.2018 rejected the objections filed by Sneh Lata on the ground that the production of such record would help the Court in arriving at just decision. Thereafter, PW 1 Suresh Kumar was partly cross-examined on 24.05.2018 with the help of record produced by Sneh Lata. In the order dated 24.05.2018, it was observed by the trial Court that further cross-examination of PW 1 Suresh Kumar is deferred for want of record and Sneh Lata was directed to produce the record pertaining to M/s Sneh Sales Corporation, Ganganagar.

[12]. The aforesaid order in a way was in conflict with the summoning of witnesses for production of record of M/s Sneh Sales Corporation, Ganganagar for which diet money was also deposited before the trial Court. The Trial Court was under obligation to resort to Order 16 Rule 10 CPC when the summoned witness did not appear. Sneh Lata was only required to produce record of M/s Sneh Sales Corporation, Rampura

Phul. In the event of non-production of record by Sneh Lata beyond the record for which she was summoned, the trial Court has closed the evidence of the plaintiff vide order dated 30.07.2018.

[13]. Perusal of the aforesaid order would show that evidence of the plaintiff was closed only on the ground that he could not produce the record for his own cross-examination. Petitioner was not supposed to produce the relevant record as the record was to be produced by the concerned clerks/officials who were summoned vide order dated 15.09.2014. Sneh Lata was only summoned along with record of M/s Sneh Sales Corporation, Rampura Phul in the aforesaid application.

[14]. It is not in dispute that the record of M/s Sneh Sales Corporation, Rampura Phul was produced in sealed covered and PW 1 Suresh Kumar was cross-examined by learned counsel for the defendants on the basis of such record. Petitioner was not supposed to produce the record as Sneh Lata was directed to do the same and she had produced the same and the petitioner was partly cross-examined on the basis of said record.

[15]. In view of aforesaid position, I find that the order closing the evidence of the plaintiff/petitioner is not justified in the eyes of law. This revision petition is accordingly allowed. Impugned

order is hereby set aside. Trial Court shall proceed with the matter in accordance with law.

11.09.2019 **(RAJ MOHAN SINGH)**
Prince **JUDGE**

Whether reasoned/speaking Yes/No

Whether reportable Yes/No