

In the High Court of Punjab and Haryana at Chandigarh

253

CR No. 5305 of 2018 (O&M)

Date of decision:26.2.2019

SHAIL DEVI

.....petitioner

Versus

YASHPAL DAGAR

.....respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Pardeep Goyal, Advocate,
for the petitioner.

RAJ MOHAN SINGH, J.(oral)

This revision petition has been filed by the petitioner challenging the order dated 23.7.2018 passed by the Civil Judge (Jr.Divn.) Faridabad, vide which the evidence of the defendant-petitioner was closed by order of the Court.

Notice of motion was issued on 31.8.2018 by passing the following order:-

“Learned counsel for the petitioner contends that Mr. N.S. Sanwan was cited as a witness on behalf of the defendant. Process was issued to summon him. He was duly served, but he did not appear in the Court. His presence was sought to be secured by way of coercive method. Accordingly, bailable warrants were issued against

him. Instead of executing the coercive method for securing the presence of served witness, the trial Court proceeded to close the evidence of the defendant by order. Learned counsel refers to Order 16 Rule 10 CPC to contend that once the witness is served with the process of the Court, then his presence should have been secured by means of coercive method. The coercive mechanism was pressed into service, but despite that the evidence of the defendant was closed due to non-appearance of the served witness. The presence of the witness should have been secured by means of non-bailable warrants. There is an ambiguity in the orders dated 04.07.2018, 12.07.2018 and impugned order dated 23.07.2018.

Notice of motion for 26.10.2018.

In the meanwhile, trial Court is directed to adjourn the proceedings beyond the date fixed by this Court.”

As per office report, respondent has been duly served through wife. The service is valid in terms of Order 5 Rule 15 CPC. There is no representation on behalf of the respondent despite service.

Perusal of the record would show that one N.S.

Sanwan (stamp vendor) was cited as a witness on behalf of the petitioner. Process of the Court was issued to summon him. The witness was duly served, but he did not appear despite service. The Court proceeded to secure his presence by way of coercive method. Bailable warrants were issued against him. The Court instead of securing his presence by means of coercive method, proceeded to close evidence of the defendant-petitioner.

Learned counsel for the petitioner submitted that if a summoned and served witness does not appear before the Court, it was obligatory on the part of the Court to secure his presence in terms of Order 16 Rule 10 CPC. Having proceeded in that direction, the Court was not justified in closing the evidence of the defendant-petitioner by order of the Court without ascertaining the factum of presence of the witness. Once the coercive mechanism was pressed into service, the Court was under legal obligation to wait for the presence of the served witness. If despite issuance of bailable warrants, the summoned witness does not turn up, the Court was bound to issue non bailable warrants against him. It appears that there is an ambiguity in the orders dated 4.7.2018, 12.7.2018 and impugned order dated 23.7.2018.

For the reasons recorded herein above, I deem it

appropriate to accept this revision petition.

Consequently, this revision petition is allowed. The impugned order dated 23.7.2018 is set aside and the trial Court is directed to proceed in accordance with law. Normal consequences to follow.

February 26, 2019
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(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/Speaking	Yes/No
<i>Whether reportable</i>	<i>Yes/No</i>