

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

Darshan Singh and othersPetitioners
Vs
Pritam SinghRespondent

[3]. It appears from the record that at one point of time Neeraj Kumar, JE from the Sanitation Department was sought to be summoned as the Sanitation Department has undertaken some development work over the suit property.

[4]. Perusal of the record would further show that record from the office of BDPO was sought to be summoned by issuing summons to Sukhwinder Kaur, Clerk, who was duly served with the process of the Court, but did not produce the record. Even at one point of time bailable warrants were issued against her and thereafter attachment of her salary of one month was also ordered. However, the record from the office of BDPO was not produced. Thereafter, evidence of the defendants/ petitioners was closed by the impugned order.

[5]. Learned counsel for the petitioners submitted that if the summoned witness did not produce the record, then the Court should have adopted process of Order 16 Rule 10 CPC in order to secure presence of served witness by means of coercive method. Such provision was not evolved by the trial Court, rather evidence of defendants was closed. Even the statement of Neeraj Kumar JE from the Sanitation Department in the context of non-availability of record with his office is of no consequence as the summoned witness from the office of BDPO was to produce the record, who was duly served with the process of the Court.

[6]. As against this learned counsel for the respondent submitted that plaintiff's cross-examination was done in the year 2017 and the evidence was closed on 15.05.2017. Since then

defendants have not concluded their evidence.

[7]. After considering the submissions made by learned counsel for the parties, it would be in the fitness of things, if one opportunity is granted to the petitioners/defendants for concluding their evidence by summoning the record from the office of BDPO with the process of the Court. Accordingly, the revision petition is accepted and the impugned order dated 09.10.2018 passed by the Civil Judge (Jr. Divn.) Malout, District Sri Muktsar Sahib, is set aside. One opportunity shall be granted to the petitioners/defendants for concluding their evidence, however subject to payment of costs of Rs.10,000/- to be paid to the plaintiff. Payment of costs shall be the condition for granting indulgence by the trial Court in the aforesaid context.

[8]. It is made clear that only one effective opportunity shall be granted to the petitioners and the trial Court shall ensure summoning of the witness. In case the witness does not turn up in the first attempt, the trial Court would be at liberty to resort to the provisions of Order 16 Rule 10 CPC. The trial Court shall also make every endeavor to decide the suit at the earliest.

September 19, 2019

(RAJ MOHAN SINGH)
JUDGE

Atik

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No