

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

**CIVIL REVISION No.5813 of 2019 (O&M)
DATE OF DECISION : 2nd MARCH, 2020**

Rajender Singh Yadav

.... Petitioner

Versus

**Dakshin Haryana Bijli Vitran Nigam Limited through its SDO,
Farrukhanagar, District Gurgaon**

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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Present : Mr. Rajiv Sharma, Advocate for the petitioner.

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RAJBIR SEHRAWAT, J. (Oral)

1. The present petition has been filed under Article 227 of the Constitution of India challenging order dated 03.09.2019 passed by the Civil Judge (Junior Division), Gurugaon, whereby the evidence of the plaintiff/petitioner has been closed by order of the court; by allowing the application filed by the defendant for that purpose.

2. Brief facts giving rise to the present petition are that Jagpal- father of the petitioner; was electricity consumer of the respondent/department. Jagpal was having a tubewell electricity connection bearing Account No.BD-31 for the last about 50 years. The father of the petitioner had expired on 28.02.1993 and the instant suit was filed by the petitioner in his capacity as legal representative of Jagpal with the averments that the meter of the tubewell electricity connection had got defective. For getting the same replaced, the entire outstanding amount of ₹4,192/-, including the cost of defective meter, was paid. Despite this payment, the respondent issued a bill of ₹807/- in the month

of December, 2001. In the month of January, 2002 the respondent illegally issued another bill of ₹1,186/-. The petitioner made application dated 24.01.2002 for correction of the bills, however, no action was taken by the respondent/department. In the month of January, 2005 the respondent removed the electric wires and the poles from the tubewell of the petitioner. However, formal intimation for disconnection was not given to petitioner. Subsequently, though the connection of the tubewell of other persons in the same premises were restored, but the electricity connection of the petitioner was not restored. On account of non-restoring of connection the petitioner suffered huge loss for failing of the crops due to shortage of water. The petitioner made a request to formally disconnect the tubewell connection in their records and also to withdraw the illegally issued bills. However, no action was taken. Accordingly, the suit was filed for mandatory and permanent injunction against the respondent; for directing them to formally withdraw the electric connection and to withdraw the illegally issued bills. Pursuant to notice the respondent appeared in the court and filed its written statement. In the written statement it was mentioned that the petitioner had not paid the bills amounting to ₹78,718/-, which were issued to him on the basis of MMC (Monthly Minimum Charges). It was also stated in the written statement that the connection was formally disconnected by the respondent on 24.03.2014.

3. After completing the pleadings, the plaintiff was to lead his evidence. To prove his case, the plaintiff/petitioner submitted list of witnesses. One of the witnesses cited by the petitioner was the SDO/Clerk of the respondent/department, with the complete record

pertaining to the tubewell connection of the petitioner. Even the diet money and the expenses were deposited by the petitioner. However, the said SDO/Clerk did not appear. Therefore, in exercise of power under Order 17 Rule 3 C.P.C., the suit filed by the plaintiff was dismissed vide order dated 08.03.2018. The petitioner preferred appeal against the said order. The said appeal was allowed vide order dated 14.02.2019. The direction was given to the parties to appear before the trial court on 06.03.2019; with a further direction that one effective opportunity be afforded to the plaintiff/petitioner to conclude his evidence and thereafter reasonable opportunities be given to the defendant to lead the evidence.

4. After remand the trial court took-up the case on 06.03.2019 and parties appeared as directed by the appellate court. After this the case was fixed for witnesses on 18.03.2019. On this date, the petitioner himself appeared as witness and was examined. However, the case was fixed by the trial court for 28.03.2019 for remaining evidence of the plaintiff. Subsequently, the case was also adjourned several times, to avail the presence of the SDO/Clerk of the respondent/department, who already stood summoned as witness even before the suit filed by the petitioner was earlier dismissed. However, he did not appear even after start of the evidence again, after remand of the matter by the appellate court. Ultimately, respondent/department filed application for closure of the evidence of the petitioner; claiming therein that the plaintiff was granted only one opportunity by the lower appellate court while remanding the matter. Hence, he is wrongly being granted opportunities to lead the evidence. Accepting that application, the impugned order has

been passed. Hence, the evidence of the plaintiff has been closed by the impugned order.

5. Notice was issued in this civil revision and the record was summoned. The office report shows that the respondent has duly been served. Although, earlier the case was adjourned for 07.05.2020, however, the petitioner had preferred application for preponing of the hearing with advance notice to the respondent/department. That application was fixed on 28.01.2020. However, nobody had appeared on behalf of the respondent even on that date. Therefore, the case was adjourned for today. However, today again there is no representation on behalf of the respondent.

6. While arguing the case, learned counsel for the petitioner has submitted that undisputedly, while remanding the matter, the lower appellate court had granted one opportunity to the petitioner to lead the evidence, however, the said opportunity was ordered to be the effective opportunity for the petitioner. For compliance of the said order, the petitioner had produced himself for examination. He was duly examined as well. However, since the SDO/Clerk of the respondent/department had also been summoned even before the earlier dismissal of the suit, therefore, even he was required to appear before the trial court; in evidence of the plaintiff; in compliance of the directions issued by the court. However, the SDO/Clerk of the respondent chose not to appear on the opportunity, which was granted by the remand order of the lower appellate court. Therefore, the trial court had been adjourning the case to await the appearance of the SDO of the respondent/department as a witness; along with records. In the process, the trial court had issued

summons, bailable warrants, as well as non-bailable warrants. However, the said SDO never appeared. The case of the petitioner is dependant upon the record of the respondent/department. However, the respondent/department is bent upon hiding that record from the process of the court. In that attempt only, the SDO has failed to appear as witness, despite repeated the orders passed by the trial court. For the default of the respondent, the petitioner could not have been penalized. Hence, the impugned order deserves to be set aside and the SDO concerned deserves to be directed to appear before the trial court along with relevant record. It is further pointed out by the counsel that except this SDO along with the record, the plaintiff does not want to examine any other witness.

7. Having heard learned counsel for the petitioner, this court finds substance in the argument raised by the counsel. Needless to say that the case of the petitioner is based upon the record, which is in possession of the respondent/department only. The petitioner has been making frantic efforts right from the beginning; to ensure the presence of the departmental representative before the court; as a witness; along with the record pertaining to the electricity connection of the petitioner. The record of the court below shows that the petitioner had already deposited the necessary expenses for summoning of the said witness. The court had even summoned this SDO as a witness. However, nobody had appeared despite orders of the court. This had led to the dismissal of the suit of the petitioner as per the provisions of Order 17 Rule 3 CPC. However, since this order could not have been sustained, therefore, on an appeal being preferred by the petitioner, the said order was set aside by the lower appellate court; and one effective opportunity was ordered to

be granted to the petitioner. Not only this, the lower appellate court had directed the parties to appear before the trial court on 06.03.2019. As per the record both the parties did appear before the court, pursuant to the order passed by the lower appellate court. Even the cost imposed earlier was paid by the petitioner and the receipt was submitted before the court. The case was adjourned for 18.03.2019. On that date, the petitioner himself appeared as PW-1. The court adjourned the case for remaining witnesses of the plaintiff for 28.03.2019. Accordingly, the summons were issued to the SDO concerned. A perusal of the order dated 28.03.2019 shows that summons were actually served upon the SDO concerned, however, he chose not to appear as a witness before the trial court. Therefore, bailable warrants were issued. The order dated 04.04.2019 shows that even bailable warrants were duly served upon the said SDO. However, he again chose not to come present. The case was adjourned to 30.04.2019. Again the said SDO was not present. The order dated 30.04.2019 shows that bailable warrants issued to the said SDO were received back with the report of 'refusal'. Accordingly, this necessitated issuance of non-bailable warrants against the said SDO and the case was adjourned to 13.05.2019. Further perusal of the record shows that the case was adjourned several times with non-bailable warrants against the said SDO. The order dated 22.08.2019 also shows that non-bailable warrant was duly 'served'. Therefore, despite Bailable and Non-bailable warrants having been issued against the said officer, he has chosen not to appear before the trial court.

8. Instead, an application was filed by respondent/department for closure of the evidence of the plaintiff/petitioner with an assertion

that since the plaintiff/petitioner was granted only one opportunity and that stand exhausted, therefore, the evidence deserves to be closed down. Allowing that application, the impugned order has been passed. However, the sequence of the facts, as well as, the order passed by the court, shows that the petitioner has duly availed the opportunity granted to him. He wasted no time for compliance of the order passed by the lower appellate court, which had granted him opportunity to lead his evidence. However, the evidence of the plaintiff/petitioner also includes the evidence of the SDO of the respondent/department along with records. Although, the respondent/department had appeared before the court pursuant to the order passed by the lower appellate court, but the officer of the department, which already stood summoned by the petitioner, choose not to appear as a witness. This led to wastage of the opportunity, which was granted to the petitioner by the lower appellate court by way of remand order. By any means, the petitioner cannot be held responsible for this wastage of the effective opportunity; to which the petitioner was entitled, pursuant to the remand order passed by the lower appellate court.

9. Hence, in the interest of justice, it would be appropriate that the petitioner is granted opportunity to complete his evidence. Since the petitioner is claiming that he is to examine only the SDO of the respondent/department along with relevant record, therefore, the petitioner deserves to be granted opportunities till the evidence of such official is produced by the respondent/department and is completed before the trial court.

10. As is obvious from the above said fact, the officer of the respondent/department has been playing tricks upon the trial court as well, because despite having been served with bailable warrants he had chosen not to appear. Even the non-bailable warrants had been issued against him several times, but he had evaded this also. However, the process of the court cannot be left to the mercy of the said unscrupulous official/witness for wasting its time. Hence, it would be appropriate that this witness is bound down to appear before the trial court; along with complete relevant record; by suitable coercive means.

11. Accordingly, the present petition is allowed. The petitioner is granted opportunities to complete his evidence; till the evidence of the said SDO of the respondent/department is produced and is completed before the trial court; as the evidence of the plaintiff. Since the SDO concerned has behaved like a recalcitrant and defying official witness, this court deem it appropriate to grant one more opportunity to him to appear as witness before the trial court along complete relevant record, on the date which shall now be fixed by the trial court. However, if this witness does not appear before the trial court on such a date to be fixed, then the trial court shall issue the warrant of arrest against this witness. A copy of warrant of arrest shall be endorsed to the Commissioner of Police, Gurugram as well. The Commissioner of Police, Gurugram shall ensure that this witness is arrested and taken into protective custody within a week from the date of warrant. Thereafter the said witness shall be kept in District Jail, Bhondsi, till his examination and cross-examination is completed.

12. Besides this, since the respondent/department has tried its best to wrongly defeat the claim of the plaintiff/petitioner by withholding

the evidence so far, and has wasted the time of the courts repeatedly, this court deems it appropriate to burden the respondent/department with cost of ₹10,000/-. The cost is ordered to be deposited with the District Legal Services Authority, Gurugram. The cost shall be recovered from the personal pocket of the concerned SDO.

2nd MARCH, 2020
'raj'

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:	Yes	No
Whether Reportable:	Yes	No