

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-3238-2021

Date of Decision: 13.12.2021

Balwinder Kaur

....Petitioner

VS

Harpal Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Sandeep Bansal, Advocate
for the petitioner

SUDHIR MITTAL, J. (Oral)

The petitioner is defendant No. 1 in the civil suit. Vide order dated 16.11.2021, her evidence has been closed by order on the ground that the evidence has not been concluded despite 35 effective opportunities having been availed and the case being an old one.

Learned counsel for the petitioner has submitted that the case involves examination of validity of a Will. This is evident from order dated 03.01.2020 whereby the defendant has been permitted to examine handwriting expert to compare the signatures of the testator with his admitted signatures. The Will was registered in Bhopal and, thus, a witness was summoned from the office of Sub Registrar, Bhopal. Zimni orders dated 18.08.2021 onwards show that bailable warrants were issued for the witness but the trial Court closed the evidence without examining whether the said warrants had been executed. Reliance has been placed upon judgment dated 18.12.2018 passed in ***CR-7276-2018 Nitin Jain vs. Anita Jain and others***. The trial Court was apparently in error in closing the evidence of the petitioner-defendant and, accordingly, the order deserves to be set aside.

The order dated 03.01.2020 undoubtedly shows that the defendant

the testator. For this purpose the Will in original did not need to be summoned from the office of the Sub Registrar at Bhopal. The original would have been produced on record by the plaintiff and all that was required was comparison of the signatures thereupon. Under the circumstances, it is not understandable why a witness was being summoned from the office of the Sub Registrar, Bhopal. It appears that the same was done either to delay a decision of the suit or under mistaken legal advice. Either way the defendant was not entitled to ask for an adjournment just to suit her whim. Further, perusal of the order dated 08.09.2021 shows that a direction was issued to the defendant to supply E-mail ID of the concerned witness. The direction was repeated on three different occasions thereafter, yet, the E-mail ID of the concerned official was not supplied. Obviously, bailable warrants could not be served through E-mail. Evidence has been closed because the defendant failed to serve her witness despite availing numerous opportunities. The reason for closure of evidence is not that despite issuance of bailable warrants the witness did not appear. Thus, the case referred to by learned counsel for the petitioner in *Nitin Jain(supra)* is distinguishable.

For the aforementioned reasons, the revision petition has no merit and is dismissed.

13.12.2021

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(SUDHIR MITTAL)
JUDGEWhether speaking/reasoned
Whether Reportable :Yes/No
Yes/No