

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

CR-1671-2020

Date of decision : 19.07.2022

Pankaj Kumar

...Petitioner

Vs.

Sandeep Kumar and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Arun Takhi, Advocate for the petitioner.

MANOJ BAJAJ, J.

Petitioner (plaintiff) is aggrieved against the decision dated 15.02.2020 (Annexure P-7) passed by Civil Judge (Senior Division), Hoshiarpur in Civil Suit No.770-2016, whereby his application filed under Section 151 CPC for discarding the evidence DW-3, namely, Bhupinder Singh, has been dismissed.

Learned counsel has argued that the plaintiff/petitioner brought a suit for permanent injunction restraining the defendants from interfering in his peaceful possession of the suit property. According to him, the defendants during their evidence had previously examined DW-1, namely, Kumedh Kumar, however, the said official witness had not brought any record relating to the account of the electricity connection, however, his examination was completed on 10.02.2019. He submits that since the relevant record was not produced by the said witness, the defendant moved another application dated 03.01.2020 (Annexure P-3), which is nothing but an application under Order 18 Rule 17 Code of Civil Procedure and it would amount to recalling the same witness, therefore, pursuant to the said

application, examination-in-chief of DW-3 on 16.01.2020 is bad in law. Learned counsel has argued that application by petitioner to discard examination of DW-3-Bhupinder Singh was wrongly declined, as once the record was not produced by DW-1, the said lacunae could not have been filled up by defendants. In support of his argument, he has relied upon the decision by Hon'ble Supreme Court in **Ram Rati Vs. Mange Ram (D) Thr Lrs. and others, 2016 (2) Law Herald (SC) 1424.** He prays that the impugned order be set aside.

After hearing learned counsel and considering the above background, it is clear that initially the defendants had examined DW-1-Kumedh Kumar and later the said witness never appeared before the Court as witness, much less pursuant to application dated on 03.01.2020, as it was Bhupender Singh, who appeared with the record as defendant's witness.

During the course of hearing, it has not been disputed by learned counsel that cross-examination of the said witness is yet to be conducted, who also fairly concedes that the application summoning the concerned Clerk neither mentions the provision under Order 18 Rule 17 CPC nor name of DW-1. Thus, the argument raised on behalf of learned counsel that it amounts to recalling the witness is misplaced.

Apart from it, the previous witness was summoned to produce the relevant record and since the said record was not produced and was brought by another witness at later date, it cannot be said that any prejudice has been caused to the plaintiff, who can cross-examine the witnesses. The judgment relied upon by learned counsel is not applicable to the facts and circumstances of this case.

In view of the above, no ground is made out to interfere with the impugned order, as it does not suffer from any illegality or impropriety.

Dismissed.

(MANOJ BAJAJ)
JUDGE

19.07.2022
vanita

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