

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

**CR No.2530 of 2022 (O&M)
Date of decision: 19.07.2022**

The Rawalpindi Self Supporting Co-Operative Cinema Society
Limited, Ludhiana and others

....Petitioners

Versus

Pritpal Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Sumeet Mahajan, Sr. Advocate
with Mr. Saksham Mahajan, Advocate
Mr. Rabani Attri, Advocate
and Mr. Mandeep Singh, Advocate
for the petitioners.

Mr. Amit Jhanji, Sr. Advocate
with Mr. Anmol Puri, Advocate
Ms. Eliza Gupta, Advocate
and Mr. Gurmohan Bedi, Advocate
for the respondent.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this petition, filed by the petitioner – Rawalpindi
Self Supporting Co-Operative Cinema Society Limited, Ludhiana
through its Secretary Shabnam Chadha and Rajinder Kaura (not a party
to the suit) is to set-aside the order dated 27.04.2022 passed by the
Civil Judge, vide which the application filed by the petitioner in Civil
Suit No.40859 of 2013, raising objection to application dated
05.12.2019 filed by the plaintiff for production of document relating to
the petitioner - society was dismissed and also to set-aside the order
dated 16.07.2021, vide which the application for production of the
record of the petitioner - society was allowed by the trial Court and
further to set-aside the order dated 23.05.2022 vide which on account

of non-production of documents by the petitioners/society, bailable warrants have been issued against petitioner No.2, to produce the record.

Brief facts of the case are that respondent No.1/plaintiff – Pritpal Singh filed a suit for declaration and for permanent injunction of the suit property as well as for rendition of account qua 1/61 share of defendant/Joginder Singh as well as 1/61 share of his wife – Rajinder Kaur in the petitioner - society claiming to be owner of the society.

The suit is being contested and at the stage, when the case was fixed for plaintiff's evidence, an application was filed for production of the record of the petitioner - society, which was allowed vide order dated 16.07.2021, by the trial Court by making the following observations:-

“Heard on the application for summoning the record for purpose of cross-examination of plaintiff. It is submitted that the record as mentioned in the application is required for cross-examination of PW1 Pritpal Singh. The said record is required from Smt. Shabnam Chadha, Secretary/Rajinder Kaura Manager of M/s Rawal Pindi Cooperative Cinema society Limited also known as Society Cinema, Ludhiana. It is submitted that PW1 Pritpal Singh has stated that he had enjoyed shares of deceased Partap Kaur and Sheel Kaur and he is to be cross-examined. Therefore, the record mentioned in the application be summoned.

2. It is argued by the Ld. counsel for the applicant that PW1 Pritpal Singh has given evasive replies in his cross-examination. Therefore, it is necessary to put these documents to him. Lastly, it is prayed that the present

application be allowed and the record be summoned.

3. The learned counsel for the respondent has filed reply to the present application taking preliminary objections on the ground that the application is devoid of merits and is abuse of process of law. The same has been filed to delay the proceedings of the case. Earlier also similar applications have been dismissed by the court and now the present application has been moved by changing the formation of the application whereas the basic intent of the application remains same. It is further submitted that it is not mentioned that for which purpose the present record is being sought. Moreover, the Cinema Society, Ludhiana is not party to the present suit. The entire record sought by the applicant is already available to him as applicant has stepped into shoes of Joginder Singh who was promotee member of the society, during his life time and mother of the applicant namely Rajinder Kaur was also promotee member of the society. The applicant can summon the record during his evidence. Therefore, the present application be dismissed.

4. Order 16 Rule 6 CPC states that :

Summons to produce document :- Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he caused such document to be produced instead of attending personally to produce the same.

*The learned counsel for the applicant has relied upon case law cited in "**Sh. Kamal Parkash & Anr. v. State of Himanchal Pradesh**", 2015 (42) R.C.R. (Criminal) 630, wherein it has been held that Held, no denial of fact that petitioners had every right to summon*

*the records as it was then alone that petitioners could have confronted prosecutrix in order to test her veracity and shake credibility of her statement Mere fact that official record was admissible under Section 76 of Act was of no avail, as record which petitioners sought to confront prosecutrix would not speak for itself - Therefore, order of dismissal set aside - Hence revision allowed. The learned counsel for the applicant further relied upon case law cited in "**Jai Singh v. Jagdish**" 2002(1) ICC 897, wherein it has been held that Therefore summoning of the original document become necessary for the just decision of the suit as it may have material bearing over the just decision of the suit.*

5. Admittedly, the present suit has been filed for separate possession by way of partition and for rendition of accounts pertaining to business concerns one of which is M/s Rawal Pindi Cooperative Cinema society Limited also known as Society Cinema, Ludhiana.

6. Since, the present suit pertains to rendition of accounts of M/s. Rawal Pindi Cooperative Cinema society Limited also known as Society Cinema, Ludhiana, therefore, it is necessary to put the record of the said society to the witness during his cross-examination. The applicant cannot be denied the opportunity to put these questions to the witness. The Ld. counsel for respondent has referred to the earlier applications which were dismissed by the Predecessor of this Court while dismissing those applications it was clearly mentioned that the defendants are liberty to summon the record of the Society at the time of their evidence and the plaintiff cannot be given any direction to produce the documents as he is not in possession of the documents. However, in the present application the applicant does not seek any direction for the respondent/plaintiff to produce the

documents but seeks the direction to the manager and secretary of the Society to produce these records. The purpose of summoning the records is clearly mentioned i.e. for cross-examination of PW Pritpal Singh. As both the parties have sought similar relief of rendition of accounts of the society, it is necessary to produce the record of the society for cross-examination of the witness.

7. In view of above said discussion, the present application in hand is hereby allowed and summons be issued to the witnesses as mentioned in the application for 22.07.2021.”

Learned senior counsel for the petitioner has argued that in fact, prior to filing of this application for summoning the record, 02 other applications were filed for the same relief but the same were not allowed vide order dated 04.11.2019 passed by the trial Court with the observation that even on an earlier occasion, an application was filed by LR of defendant No.1, seeking discovery of documents relating to business of the society, which was decided by the trial Court vide order dated 07.09.2018 observing that the plaintiff was not in possession of those documents and therefore, no direction was issued to produce the documents but liberty was granted to the defendant to produce the record at the time when the case is fixed for the defendant's evidence. Learned senior counsel for the petitioners has, thus, argued that on two earlier occasions when the orders dated 07.09.2018 and 04.11.2019 were passed, the applications filed by two sets of defendants were not allowed and therefore, the impugned order has been passed ignoring the said facts.

It is next argued that the petitioner/society has filed C.R.

No.1564 of 2021, challenging the same impugned order dated 16.07.2021, however, the same was withdrawn with the following observations:-

“Civil revision is filed under Article 227 of the Constitution for setting aside the impugned order dated 16.07.2021 (P-6) passed by Civil Judge (Junior Division), Ludhiana whereby application of defendant No.1(v)/respondent filed under Order 16 Rule 6 CPC has been allowed and (i) Secretary and; (ii) Manager of petitioner-Society, namely, Smt. Shabnam Chadha and Sh. Rajinder Kaura respectively were directed to produce certain documents.

Learned counsel for petitioner, on instructions, wishes to withdraw the present petition with liberty to take recourse to the remedy available under Section 162 of Evidence Act before the learned trial Court.

Dismissed as withdrawn with the liberty aforesaid.”

Learned senior counsel for the petitioners has also submitted that in terms of the said order, the petitioner has moved an application before the trial Court, raising objection in terms of Section 162 of the Indian Evidence Act, regarding production of the documents summoned by the trial Court as per the impugned order dated 16.07.2021. The said application has been dismissed by the trial Court by passing the following impugned order dated 27.04.2022:-

“7. Heard. Perusal of record reveals that vide order dated 16.07.2021 the application for summoning the record of the society was allowed. In the said order, it has been specifically observed that as the present suit pertains to rendition of accounts of M/s Rawal Pindi Cooperative Cinema society Limited, therefore it is necessary to put the

record of the said society to the witness during cross-examination. It was specifically mentioned that purpose of summoning the record is for the cross-examination of PW Pritpal Singh. The earlier applications which were dismissed were also referred in the said order. The applicant thereafter approached the Hon'ble High Court where the applicant had withdrawn the revision petition with liberty to take recourse to the remedy available U/s 162 of Indian Evidence Act before trial Court. Section 162 of Indian Evidence Act reads as under :

8. Production of documents. - A witness summoned to produce a document shall, if it is in his possession or power, bring it to the Court, notwithstanding any objection which there may be to its production or its admissibility. The validity of any such objection shall be decided on by the Court.

The Court, if it sees, fit, may inspect the document, unless it refers to matters of State or take other evidence to enable it to determine on its admissibility.

9. The Court has already allowed the application of the defendant no.1/respondent for summoning of the record. As per Section 162 of the Indian Evidence Act witness summoned to produce a document shall bring the document to the Court if it is in his possession or power. If there is any objection regarding production, the same is to be decided by the Court. The present suit pertains to rendition of accounts of the society. Perusal of the cross-examination of PW Pritpal Singh shows that in many of his replies which are evasive, he has stated that he does not remember the facts. Therefore, it becomes important to put the record to the witness so that the matter can be decided and the controversy can be properly settled between the parties. The applicant has not given any reason that why the society should not produce these

documents. It is difficult to comprehend that that if the society has no concern with the parties then why the society is trying to withhold the documents and is not producing them. All the documents mentioned in the application are necessary at this stage to be produced in the Court so that the controversy can be settled. The applicant has taken various grounds in the instant application, which also find mention in the synopsis submitted at the time of arguments. All those grounds cannot be taken now as the only remedy available to him is U/s 162 of Indian Evidence Act. As the revision petition was withdrawn by the applicant, the same grounds cannot be re-agitated here.

10. The documents sought are necessary to settle the controversy. Moreover, the same has already been decided by this Court.

11. In "J.D. Metha & Anr. Vs. P.H. Nanavati & Ors." 1983(2) BCR 45, it has been held that :

"After remand, the Ld. Magistrate issued a notice for production of documents. The notice was served on the witness for production of the said documents. Having receive a notice, the file the present application. There is no substance in the application. In the first instance, the petitioner ought to have complied with the witness summons for production of documents. He should not have disobeyed the summons and rushed to the High Court for challenging the summons for production of documents. The language of Section 162 of the Indian Evidence Act, makes it abundantly clear the notwithstanding any objection, he must obey the summons for production of documents and raise any objections thereto, as to the admissibility thereof. Instead of following the procedure, the petitioner rushed to the High Court by way of this criminal application and it is on that ground alone that

this application deserves to be dismissed."

12. Thus, guided by above cited law and keeping in view the fact that the matter has already been adjudicated, this court finds no merit in the instant application and the same is hereby dismissed.

13. Case is adjourned to 06.05.2022 for summoning of record from the concerned society."

Learned senior counsel for the petitioners has further contended that when the earlier applications were filed by the defendants under Order 11 Rule 14 CPC, both these applications were dismissed and therefore, there was no occasion for the trial Court to dismiss the objections filed by the petitioner under Section 162 of the Indian Evidence Act against the impugned order dated 16.07.2021. It is also submitted that the trial Court has not taken into consideration the provisions of Order 11 Rule 14 CPC and Order 16 Rule 6 CPC as well as Section 162 of the Indian Evidence Act, while passing the impugned order and therefore, the same is liable to be set-aside.

In reply, learned senior counsel for the respondents has argued that the earlier 02 applications were filed under Order 11 Rule 14 CPC and the present application filed is under Order 16 Rule 6 CPC and both are on different footing. For a ready reference, the same are reproduced below:-

ORDER XI RULE 14 CPC

Discovery by interrogatories— *In any suit the plaintiff or defendant by leave of the Court may deliver interrogatories in writing for the examination of ‘the opposite parties or any one or more of such parties’ and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each*

of such persons is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose: Provided also that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

14. Production of documents— *It shall be lawful for the Court, at any time during the pendency of any suit, to order the production ‘by any party’ thereto, upon oath of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.*

ORDER XVI RULE 6 CPC

List of witnesses and summons to witnesses— (1) *On or before such date as the Court may appoint, and not later than fifteen days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such person for their attendance in Court.*

(2) *A party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned.*

(3) *The Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such part shows sufficient cause for the omission to mention the name of such witness in the said list.*

(4) *Subject to the provisions of sub-rule (2),*

summonses referred to in this rule may be obtained by the parties on an application to the Court or to such officer as may be appointed by the Court in this behalf.

6. Summons to produce document— ‘Any person’
may be summoned to produce a document, without being summoned to give evidence, and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.”

Learned senior counsel for the respondents has further submitted that the basic difference in the two provisions is that under Order 11 Rule 14 CPC, the Court can order production of documents by any party to the suit whereas under Order 16 Rule 6 CPC, any person, who may not be a party to a suit may be summoned to produce the documents. It is also submitted that mere dismissal of the earlier 02 applications under Order 11 Rule 14 CPC, is not a bar to file an application under Order 16 Rule 6 CPC.

Learned senior counsel for the respondent has further contended that once the petitioner has availed the remedy of filing CR No.1564 of 2021, which was later on, withdrawn on 15.11.2021, the petitioner cannot challenge the order dated 16.07.2021 as it was challenged in the said order itself and therefore, the petitioner is adopting the delaying tactics in disposal of the suit. It is also submitted that even under Section 162 of the Indian Evidence Act, it is the discretion of the Court as to how the objection, which is raised regarding production or admissibility of a document by a summoned witness will be decided. Thus, it is argued that the revision petition may

be dismissed.

After hearing the learned senior counsel for the parties, I find no merit in the present revision petition. It is admitted case of the parties that the first two applications were filed under Order 11 Rule 14 CPC, directing the plaintiff to produce some documents, which was rejected by the Courts below vide orders dated 07.09.2018 and 04.11.2019, however, the present application is filed under Order 16 Rule 6 CPC for summoning a witness from the petitioner - society and therefore, the trial Court has rightly allowed the said application.

Even otherwise, this Court find no illegality in the impugned order dated 27.04.2022 vide which the objections raised by the petitioners under Section 162 of the Indian Evidence Act were dismissed.

The trial Court has rightly observed that the documents sought to be produced by the plaintiff are necessary to settle the controversy in dispute as it was found in the cross-examination of PW-1 Pritpal Singh that he was giving evasive replies and therefore, in order to bring the correct facts and evidence to the knowledge of the Court, the trial Court has rightly allowed the application.

Since the petitioner No.2 is not appearing before the trial Court along with the record, the trial Court has rightly issued bailable warrants against her, vide order dated 23.05.2022, in order to comply with its order.

As the petitioner - society is trying to avoid the production of documents as allowed by the trial Court on one pretext or the other and by filing repeated petitions before this Court just to delay the

disposal of the suit, therefore, finding no illegality or infirmity in the impugned orders, the present revision petition is dismissed.

Disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

19.07.2022

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No