

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

Sr. No.121

**CR-3301-2022 (O&M)
Date of Decision: 22.08.2022**

MANISH GOYAL

...Petitioner

VERSUS

MAJOR SINGH BAWA

...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr. Vivek Goyal, Advocate
for the petitioner.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 30.07.2022 passed by learned Addl. Civil Judge (Sr. Divn.), whereby the evidence of the petitioner (defendant) was closed by order.

In the suit for decree for recovery filed by Major Singh, present petitioner was impleaded as defendant. After framing of the issues, the evidence of the plaintiff was recorded and case was fixed for recording of the evidence of the defendant for the first time on 03.10.2019. On that very day, affidavit of one DW Manish Goyal was tendered into evidence. Thereafter, the case was adjourned for cross-examination of the said witness and then on account of Covid situation, the case was adjourned further.

Now, learned counsel for the petitioner submits that even though, the petitioner had filed an application for summoning of the witnesses, which was allowed by the Court, but however, one said witness did not make appearance and therefore, his presence could not be secured by the petitioner at his own level. The Court had started the procedure for issuance

of bailable warrants and then non-bailable warrants and had abruptly passed the impugned order closing the evidence. The copies of requisite zimini orders have been placed on record.

Perusal of the zimini orders reveal that on 24.11.2021, DW Apninder Singh, who is a summoned witness, was bound down for 24.11.2021 but he did not make appearance and he was ordered to be summoned through bailable warrants for 17.01.2022. On 17.01.2022, again said witness did not make appearance and fresh bailable warrant was ordered to be issued for 08.02.2022. On 08.02.2022 also, DW Apninder Singh had not made appearance, despite issuance of bailable warrants and he was ordered to be summoned through non-bailable warrants for 22.02.2022. However, on 22.02.2022, the non-bailable warrant was not received back and he was again ordered to be summoned through non-bailable warrants for 01.04.2022. However, on 30.03.2022, the case was taken up and it was further adjourned for 11.04.2022, as the Presiding Officer was on leave. On 11.04.2022, again non-bailable warrant was not received back and Apninder Singh was ordered to be summoned for 28.04.2022 through non-bailable warrants. On 28.04.2022, 10.05.2022, 21.05.2022 and 12.07.2022, Apninder Singh did not make appearance and he was ordered to be summoned for the same purpose till 30.07.2022. On 30.07.2022, the impugned order was passed, whereby the evidence of the defendant was closed by order, on the observations that the defendant has availed several opportunities including last opportunity to conclude its evidence but failed to conclude the same.

However, it is pertinent to mention that an application for deposit of the diet money for summoning of the witness was filed by the

counsel for the defendant, which is at Annexure P-4 and the same was allowed and subsequently, the requisite witness of the police department was summoned. However, he did not make appearance and bailable warrant, to secure his service, was issued. Thereafter, even he was ordered to be summoned through non-bailable warrant.

Once the process has been initiated by the Court concerned to summon the witness along with record and when the said witness, despite so being asked by the Court, does not make appearance, it is incumbent upon the Court concerned to use coercive method, to procure the service of the witness concerned. In these circumstances, when the process, as such, has been issued for summoning of the official witness, then, it is beyond the control of the litigant to procure the presence of the said witness along with the summoned record.

Also, it is submitted that the case before the lower Court is now fixed for rebuttal evidence and arguments for 24.08.2022.

Considering the aforesaid fact situation, the present revision petition is hereby accepted and the impugned order is set aside, with the request to learned lower Court to secure the presence of DW Apninder Singh, through coercive method and if it deems appropriate, the requisite record required, as detailed in Annexure P-4, which is an application for permission to deposit the diet money for summoning of the witnesses, be summoned by way of examination of any other witness, so that delay is not caused in disposal of the case.

22.08.2022

himanshu

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No