

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

**257**

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**CR No. 6749 of 2019**

**Date of decision : 14.11.2022**

**Ajmer Singh**

**.....Petitioner**

**Vs.**

**Mandeep Singh and others**

**.....Respondents**

**CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

Present: Mr. Aakash Singla, Advocate and  
Ms. Vaishali Singla, Advocate, for the petitioner

Mr. Onkar Singh, Advocate, for respondents no.1 and 2

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**TRIBHUVAN DAHIYA, J. (Oral)**

1. This revision petition has been filed under Article 227 of the Constitution of India for setting aside the order, dated 16.10.2019 (Annexure P-8), whereby the petitioner/defendant's evidence was ordered to be closed.

2. Learned counsel for the petitioner/defendant (hereinafter referred to as 'the defendant') states that he was afforded only three opportunities to examine the witnesses. First time on 16.9.2019, two of his witnesses, DW-1 and DW-2, appeared and filed their affidavits in examination-in-chief. Their cross-examination was deferred to 20.9.2019 on the request of the respondents/plaintiffs. The cross-examination was completed on 20.9.2019, and the case was adjourned to 4.10.2019 for the remaining defendant's evidence. On that date, the defendant moved an application for summoning two of the official witnesses Bikkar Singh *Lamberdar* and *Halqa Patwari*, with the record. On his application, the two witnesses were summoned. Pursuant thereto, one of them,

i.e., *Halqa Patwari* appeared before the trial Court on 4.10.2019 and was examined. As per service report dated 3.10.2019, reproduced in the petition, the other official witness, *Bikkar Singh Lamberdar*, refused to accept notice. He was accordingly required to be proceeded against under provisions of Order XVI Rule 12 CPC. Instead of doing so, the defendant's evidence was closed by the Court, vide order dated 16.10.2019, by recording that despite availing a number of effective opportunities, the defendant has failed to adduce his evidence.

3. The facts mentioned above, show that the order passed by the trial Court closing the defendant's evidence is contrary to the record. Only three opportunities were granted to the defendant for adducing the evidence, and three of his witnesses were duly examined on the dates fixed. Only witness remained to be examined is *Bikkar Singh Lamberdar*, who is an official witness and has refused service. Instead of closing the defendant's evidence, trial Court was required to take appropriate action, as may be required under provisions of Order XVI Rule 12 CPC.

4. In view of the aforesaid, this petition is allowed and the order dated 16.10.2019 is set aside. The trial Court is directed to pass appropriate orders with respect to summoning of *Bikkar Singh Lamberdar* as defendant's evidence in the light of the service report dated 3.10.2019 wherein he is stated to have refused service.

**(TRIBHUVAN DAHIYA)**  
**JUDGE**

**14.11.2022**

*Ashwani*

Whether Speaking/Reasoned : Yes/No  
Whether Reportable : Yes/No