

CR-3334-2023 (O&M)

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

Sr. No.121

CR-3334-2023 (O&M)

Date of Decision: 29.05.2023

GURMEET SINGH

....Petitioner

Versus**KARAMJIT KAUR AND ANOTHER**

....Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Mr. Jaideep Verma, Advocate,
for the petitioner.

ARCHANA PURI, J. (ORAL)

Challenge in the present revision petition is to the order 17.05.2023 (Annexure P-9) passed by learned Lower Court, whereby evidence of the petitioner/defendant No.2 was closed by order.

Learned counsel for the petitioner heard.

During the pendency of the suit for possession, by way of specific performance of the contract, the petitioner, who was impleaded as defendant No.2, had made appearance for the first time before learned Lower Court on 24.02.2023. On the said date, even two PWs were examined and the case was fixed further for 01.03.2023 for DWs. Thereafter, an application was filed by the present petitioner for seeking permission to examine the other witnesses before his examination and the same was allowed, vide order dated 20.04.2023, copy whereof is Annexure P-4 and the date fixed in the case was 28.4.2023. On 28.04.2023, an

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application was filed for summoning of the witnesses and deposit of diet money, copy whereof is Annexure P-6, which was allowed by learned Lower Court and thereupon, the diet money was deposited vide receipt No.1186, which is Annexure P-7. However on 28.04.2023, while observing that no evidence of the defendant is present, the case was adjourned to 08.05.2023.

However, from perusal of the zimini order dated 06.05.2023, copy whereof is Annexure P-8, it is evident that the file was taken up on 06.05.2023, as the Presiding Officer was to proceed on leave for 08.05.2023 and it was further adjourned to 17.05.2023. On 17.05.2023, the impugned order was passed, thereby closing the evidence of the petitioner/defendant No.2, by order.

Perusal of the zimini orders, as observed aforesaid, reveals that there is not mention made about the summons, having been issued, more particularly, in pursuance of the application, filed for summoning of the official witnesses, as detailed in Annexure P-6, relating to which, the diet money had already been deposited. Once the application for summoning of the witnesses, is allowed and the diet money, is so deposited, it becomes the duty of the concerned Court for issuance of the summons for the service of the witnesses to proceed further, in accordance with law, to secure the presence of the witnesses.

However, in the present case, as observed aforesaid, in the impugned order, as well as the order passed on the other dates, there is total silence maintained by learned Lower Court, with regard to summoning of the witnesses and fate of the summoning, so done, as per Annexure P-6.

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Keeping in view the aforesaid fact situation, learned Lower Court had erroneously closed the evidence of the petitioner/defendant No.2. Consequently, order dated 17.05.2023, is hereby set aside with a direction to learned Lower Court to proceed further with recording of the witnesses of the defendant, while summoning the witnesses, as per Annexure P-6.

Accordingly, the instant revision petition stands disposed of.

29.05.2023*Himanshu***(ARCHANA PURI)
JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : Yes/No