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

CR-6296-2019

Date of Decision: 03.05.2023

Hari Chand

..... Petitioner

Versus

Lachman (Deceased) through LRs and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Arun Kumar Singal, Advocate,
for the petitioner.

Mr. Ashwarya Bajaj, Advocate,
for respondents No.1(a), (b) and (c).

RAJBIR SEHRAWAT, J. (ORAL)

This is a petition filed under Article 227 of the Constitution of India praying for setting aside the order dated 25.07.2019 (Annexure P-3) passed by the Additional Civil Judge (Senior Division), Sonapat, whereby the evidence of the petitioner has been closed by court order, as well as, the order dated 20.09.2019 (Annexure P-4), vide which application under Order 18 Rule 17 read with Section 151 of the Code of Civil Procedure filed by the petitioner for additional evidence has been dismissed.

It is submitted by the learned counsel for the petitioner that the evidence of the petitioner was wrongly closed by the Court below. Even the application filed for leading additional evidence has been declined for the wrong reasons. Learned counsel has submitted that to prove the sale deed and some legal proceedings in his favour, the petitioner had summoned the

relevant official witnesses from the office of the Sub-Registrar and the Civil Court, as well as, the deed writer. Even the diet money was deposited by the petitioner. The petitioner could not have done anything more for ensuring the presence of the said witnesses. However, despite summons, the witnesses did not come present, leading to the closure of the evidence of the petitioner. The petitioner is the contesting defendant in the suit. Therefore, his case would be seriously prejudiced, if he is not granted opportunity to lead the additional evidence as prayed by him. Therefore, the petitioner deserves to be granted opportunity to lead the evidence. Hence, the impugned orders passed by the Trial Court deserve to be set aside.

On the other hand, learned counsel for the respondent has submitted that the petitioner had got ample opportunities to lead his evidence. However, he failed to complete the evidence with due promptitude. Therefore, the Court below has rightly closed the evidence of the petitioner and, subsequently, has rightly dismissed the application for additional evidence moved by the petitioner.

Having heard learned counsel for the parties and having perused the case file, this Court finds that the petitioner availed several opportunities to lead the evidence in his defence. However, he could not complete his evidence despite availing several effective opportunities. Therefore, this Court does not find any *ex facie* impropriety in the course of action adopted by the Trial Court.

However, the law of procedure is handmade to advance the

interest of the substantial justice. The interest of the substantial justice requires that the parties to the *lis* should be heard-out to the maximum possible extent, instead of excluding them from hearing. Moreover, the record shows that the petitioner had summoned some official witnesses and had even deposited the requisite money. Therefore, the presence of those witnesses should have been ensured by the Trial Court so that the petitioner could complete his evidence. However, the said witnesses did not appear before the Trial Court and the Trial Court has closed the evidence. Subsequently the Trial Court has refused the permission to lead additional evidence on the ground that it was the responsibility of the petitioner-defendant to lead his evidence in support of his case. However, the concept of producing witness by a party on its own risk and responsibility is applicable only qua the private witnesses which the party may summon to support his case at its own level. So far as the official witnesses are concerned, a citizen cannot force such a witness to come present in the Court. He can only present his request before the Court and do the needful qua fulfilling the requirement of depositing requisite money etc. Thereafter, it is the obligation upon the Court to summon the relevant witness and to ensure the examination of such witness before the Court. Needless to say that the official witnesses sought to be examined by the petitioner are summoned to prove the documents which were dealt with by the said witnesses in their official capacities or pertaining to the record of the concerned Court. Therefore, the approach of the Court in declining the

evidence of such witnesses is not sustainable in law. Moreover, the petitioner is a contesting defendant in the suit. Therefore, his case would be prejudiced beyond redemption, if he is not permitted to lead appropriate evidence in his defence. Therefore, it would not be unjustified to grant opportunity to the petitioner to lead the evidence, however, by putting him under an appropriate financial burden; so as to make him realize his mistake in wasting time of the Court.

Accordingly, the present petition is allowed and the impugned orders passed by the Trial Court are set aside. The Trial Court is directed to grant one effective opportunity to the petitioner to lead the evidence in his defence, however, subject to payment of Rs.10,000/- as costs; to be deposited by the petitioner with the Institute for the Blind, Sector 26, Chandigarh, within a period of 15 days from today.

However, it is clarified that the Trial Court shall grant the aforesaid opportunity to the petitioner to lead the evidence only on production of the receipt qua the costs having been deposited by him, as ordered above.

Since, the witnesses, which the petitioner intend to examine include even the official witnesses, therefore, if the petitioner deposits the requisite expenses with the Trial Court on the first opportunity, then the Trial Court shall issue bailable warrants against the said witnesses. If the said witnesses do not appear before the Court even with the bailable warrants, then the Trial Court shall issue non-bailable warrants against the said

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witnesses; so as to ensure that those witnesses come present before the Court and make appropriate deposition in the matter.

(RAJBIR SEHRAWAT)
JUDGE

03.05.2023
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No