

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

**Civil Revision No. 8907 of 2018(O&M)
Date of Decision: 29.11.2023**

Darshan Singh

...Petitioner

Versus

Ranjit Singh (deceased) through LRs & Anr.

...Respondents

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

**Present:- Mr. Sachin Mittal, Advocate and
Mr. Akshat Mittal, Advocate
For the petitioner.**

None for LRs of respondent No.1.

None for respondent No.2.

KARAMJIT SINGH, J.

1. Today, none has put in appearance on behalf of LRs of respondent No.1 and on behalf of respondent No.2.

2. The present petition has been filed by the petitioner/ plaintiff seeking setting aside of orders dated 20.04.2017 (Annexure P-3), dated 29.11.2017 (Annexure P-4) and dated 08.10.2018 (Annexure P-7) passed by the Court concerned in civil suit titled Darshan Singh Vs. Ranjit Singh & Ors.

3. The brief facts of the case are that petitioner filed suit for specific performance with consequential relief of permanent injunction against both the respondents on the basis of agreement to sell dated 22.03.2011 which was executed by respondent No.1 in favour of the petitioner with regard to suit property for valuable consideration. The suit

was contested by respondent No.1 and after framing of issues the case was

fixed for evidence of the petitioner and thereafter petitioner filed an application to summon official witnesses namely Record Keeper of Market Committee, Gurgaon and Manager, Indian Bank, Branch Gurudwara road, Gurgaon along with record. Both the summoned witnesses appeared before the learned trial Court on 20.04.2017, but recording of their evidence was objected by the opposite Counsel on the ground that the petitioner had not filed list of witnesses to be summoned, within a period of 15 days of settlement of issues and as such the said application was barred under Order 16 Rule 1 and in view of the said objection raised by the other party, both the said official witnesses were discharged by the trial Court with liberty to the petitioner to examine his witnesses as per Order 16 Rule 1-A CPC, as on that date list of witnesses was furnished by the petitioner. On 29.11.2017 one official witness was present and partly recorded as PW2 at which stage the opposite Counsel again raised similar objection on which the trial Court gave direction that portion of evidence recorded on that date shall not be read in evidence. Subsequently, the learned trial Court vide order dated 08.10.2018 (Annexure P-7) dismissed the application filed by the petitioner seeking review of order dated 20.04.2017 (Annexure P-3).

4. The counsel for the petitioner while assailing orders Annexures P-3, P-4 and P-7, *inter alia*, contends that Order 16 Rule 1 CPC being procedural in nature has to be considered as directory and not mandatory and in this context the counsel for the petitioner placed reliance on judgment of this Court in **M/s Steel Authority of India Ltd. Vs. M/s Steel Strips and Tubes Limited**, 2007 (3) RCR(Civil) 635. The counsel for the petitioner further submits that in light of the aforesaid settled position of law the impugned orders are liable to be set aside, being not passed in accordance with law.

5. I have considered the submissions made by counsel for the petitioner.

6. The procedural law is meant for advancement of justice and not to subvert the same. The Courts should give preference to the cause of substantive justice over the procedural technicalities. Further, provision of Order 16 Rule 1 CPC cannot be said to be mandatory but only directory as has been held by this Court in **M/s Steel Authority of India's** case (supra).

7. In light of the above, the learned trial Court should have recorded the statements of two summoned official witnesses on 20.04.2017 after recording the objection raised by the other party as their statements are necessary for just decision of the suit. Thus, the impugned orders Annexures P-3 and the subsequent orders Annexures P-4 and P-7, which are also off shoot of Annexure P-3 are suffering from material irregularities and thus are not sustainable in eyes of law.

8. Resultantly, without expressing any opinion on the merits of the case, the instant revision petition is allowed and the impugned orders, Annexures P-3, P-4 and P-7 are hereby set aside. The petitioner is at liberty to summon the aforesaid two official witnesses with assistance of the Court and on their appearance they should be examined by the learned trial Court without any delay with opportunity to the other party to cross-examine them.

(KARAMJIT SINGH)
JUDGE

29.11.2023
Jiten

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No