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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR-3734-2023(O&M)
Date of decision : 29.07.2024

Inder Pal and another

... Petitioners

Versus

Sat Pal (now deceased) through his LRs and others

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Umesh Aggarwal, Advocate
for the petitioners.

Mr.Manish Prabhaker, Advocate
for respondents no.1(i) to (vi) and respondent no.2.

VIKAS BAHL, J.(ORAL)

1. This is a Civil Revision Petition under Article 227 of the Constitution of India for setting aside orders dated 15.05.2023 (Annexure P-6) and dated 19.05.2023 (Annexure P-8) passed in Civil Suit no.4705 of 2017 instituted on 05.01.2018 titled as “Satpal vs. Inderpal and others”.
2. Learned counsel for the petitioners has submitted that in the present case, respondents no.1 and 2 had filed a civil suit in which the petitioners were defendants. It is submitted that the petitioners were relying on a Will executed by their mother and the attesting witness Gulshan Kumar as well as deed writer Gopal Bhushan Sharma were necessary witnesses for proving the said Will. It is further submitted that in the present case, the suit

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was instituted on 05.01.2018 and the issues were framed on 28.03.2018 and the evidence of the plaintiff was closed on 18.10.2022 and the first date for the evidence of the defendants was fixed as 03.11.2022. It is submitted that on 03.11.2022, the case was adjourned to 17.11.2022 and prior to 17.11.2022, on 16.11.2022, an application was filed by the petitioner for summoning the witnesses including the above said two witnesses and the diet money was duly deposited and reference in this regard has been made to receipt dated 16.11.2022 (Annexure P-3). It is stated that summons were issued in the case and after summons were served, no coercive steps were taken for enforcing the attendance of the abovesaid witnesses and the same was in violation of the provisions of Order 16 Rule 10 CPC and also against settled law. It is submitted that once the petitioners had done all which was required to be done, then it was the duty of the Court to have issued bailable / non-bailable warrants and take coercive steps to produce the said witnesses instead of closing the evidence of the petitioners, which has been done vide order dated 19.05.2023. It is further submitted that even the grant of one opportunity to lead evidence at their own responsibility was not in accordance with law and thus, even the order dated 15.05.2023 deserves to be set aside on the said ground alone.

3. Learned counsel for the respondents, on the other hand, has submitted that a large number of witnesses were examined by the petitioners after taking the help of the trial Court. It is submitted that as many as 13 opportunities were taken by the petitioners to examine their witnesses and the petitioners are only trying to delay the matter.



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4. This Court has heard the learned counsel for the parties and has perused the paper book.

5. It is not in dispute that the civil suit was instituted on 05.01.2018, issues were framed on 28.03.2018 and the evidence of the plaintiffs was closed on 18.10.2022 and the first date for the evidence of the defendants was fixed as 03.11.2022. It is also not in dispute that on 03.11.2022, the case was adjourned to 17.11.2022 for defendant evidence and on 16.11.2022 i.e. a date prior to 17.11.2022, an application dated 16.11.2022 (Annexure P-2) was filed for summoning the witnesses including the following two witnesses:-

“(ii) Gopal Bhushan Sharma, Deed Writer, District Courts, Amritsar along with record regarding drafting and registration of the Will dated 18.09.2013 by Kirpal Devi wife of Moti Ram.

DM Rs.100/-

xxx xxx xxx

(iv) Gulshan Kumar son of Piara Lal r/o Village and Post Office, Fatehgarh Churrian, Amritsar.

DM Rs.100/-”

6. As per the case of the petitioners, they are material witnesses as one is the attesting witness and other is the deed writer of the Will, as per the case propounded by the petitioners. A perusal of the receipt dated 16.11.2022 (Annexure P-3) would show that the diet money regarding the same has been deposited. A perusal of the zimni orders would show that although coercive steps were taken to secure the presence of other witnesses

but no coercive steps were taken to secure the presence of the above said

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two witnesses, who are material witnesses. It is a matter of settled law that as per the provisions of Order 16 Rule 10 CPC, where a witness fails to comply with the summons of the Court and the evidence of the said witness is material, then in such a situation, the Court is required to take coercive steps including issuance of warrants, moreso when the party leading its evidence has done all that is in their hand for summoning them through the Court, which would include deposit of process fee and diet money, as has been done in the present case. A coordinate Bench of this Court vide order dated 12.07.2000 passed in CR-6416-1999 titled as “Piara Singh vs. Smt. Vidhya Wati” had held as under:-

“In such circumstances, it was not proper for the trial Court to close the evidence of the petitioner. If a witness in spite of service or in spite of being bound down does not appear, it is for the Court to procure his presence by issuance of warrants but the Court could not take the extreme step of closing the evidence of the petitioner. It is the duty of the Court to enforce attendance of the witnesses where the party has done everything in that regard and the Court can take recourse to the provisions of Order 16 Rule 10 CPC for compelling the attendance of recalcitrant witnesses.”

7. The learned trial Court has not considered the said provision and the settled proposition of law, resulting in passing of the impugned orders which deserve to be set aside.

8. Keeping in view the above said facts and circumstances, the present revision petition is partly allowed and the impugned orders dated 15.05.2023 (Annexure P-6) and dated 19.05.2023 (Annexure P-8) are set aside and the petitioners are permitted to examine the said two witnesses



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i.e., Gopal Bhushan Sharma and Gulshan Kumar and are granted two effective opportunities for the said purpose with the help/assistance of the trial Court. The trial Court would adopt the procedure for enforcing/securing the presence of the two witnesses in accordance with Order 16 Rule 10 CPC as also the settled law. The same would however be subject to the petitioners depositing with the trial Court an amount of Rs.10,000/- within a period of two weeks from today, which would be paid to the plaintiffs in the present case.

9. It is made clear that in case the said amount is not deposited, then the present revision petition would be deemed to have been dismissed.

(VIKAS BAHL)
JUDGE

July 29, 2024
Davinder Kumar

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