



CR No.4624 of 2024

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

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CR No.4624 of 2024
Date of Decision: 14.08.2024

Abhey Malik (since deceased) through his LR

..... **Petitioner**

Versus

Sadhu Ram and others

..... **Respondents****CORAM: HON'BLE MR. JUSTICE VIKAS BAHL**

Present: Mr. Sanjiv Kumar Aggarwal, Advocate
for the petitioner.

VIKAS BAHL, J (ORAL)

1. This is a civil revision petition filed under Article 227 of the Constitution of India for setting aside the order dated 06.08.2024 (Annexure P-1) passed by the Civil Judge (Sr. Divn.) in Civil Suit No.CS-50-2010, whereby, evidence of the defendant No.1-petitioner has been closed by Court order.

2. A perusal of the paper book would show that the evidence of the plaintiff-respondents No.1 and 2 was closed on 16.04.2024 after the examination of one PW-Suresh Kumar, Numberdar, who was examined as PW-3 and the case was adjourned to 26.04.2024 for the evidence of defendant No.1. Prior to 26.04.2024, an application dated 16.04.2024 (Annexure P-7) was filed by defendant No.1 seeking summoning of the following four witnesses:-

“i. Record Keeper, Record Room, Civil Court, Kaithal along



with File of C.S. No.301/07 dated 01.11.2006 titled “Sadhu Ram Vs. Jagdish etc.” decided by the Court of Sh. Ajay Parasher ACJ(SD) Kaithal vide Judgment dated 07.03.2009.

and File of C.S. No. RBT-291 of 2008/2006 title “Pardeep etc. Vs. Jagdish etc.” decided by the Court of Madam Harshali Chaudhary CJ(JD) Kaithal vide judgment dated 07.03.2009.

ii. Clerk of Sub Registrar, Ludhiana (Punjab) along with GPA No.1353/4 dated 15.06.2005, GPA No.114/4 dated 07.04.2005.

iii. Clerk of Sub Registrar, Patiala (Punjab) along with GPA No.2194/4 dated 06.01.2009.

iv. Clerk of Sub Registrar, Jaipur Pancham (Rajasthan) alongwith GPA No.2009397000027 dated 13.01.2009, GPA No.102/4 dated 13.01.2009”.

3. It is the case of the petitioner that he had deposited an amount of Rs.2300/- as diet money (Annexure P-8) and also paid the process fee. The zimni order dated 26.04.2024 which was the first date for examination of the witnesses of the defendant would show that the official at serial No.1 had come and had produced the relevant record. The case was adjourned to 06.05.2024. The matter was not taken up on 06.05.2024 and was taken up on 29.04.2024 as is apparent from the Annexure P-10, as the Additional Civil Judge (Sr. Division) was on earned leave from 30.04.2024 to 09.05.2024 and the matter was adjourned to 20.05.2024. On 20.05.2024, it was observed that the summons which were issued to the persons shown at serial No.2, 3 and 4 have been received back unserved and accordingly, fresh notices were issued for 02.07.2024. On 02.07.2024,ailable warrants were issued to the Clerk of Sub-Registrar, Patiala and the matter was adjourned to 08.07.2024 as inspite of due service, the said Clerk had not

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appeared. The summons issued to other two Clerks were received back unserved. On 08.07.2024, one defendant witness was examined and his cross-examination was deferred on the request of learned counsel for the plaintiff and was further observed that the summons issued to Clerks of Sub-Registrars Ludhiana and Jaipur had not been received back in any form and accordingly, fresh notices were issued and further, fresh bailable warrants were issued to Clerk of Sub-Registrar, Patiala for 09.07.2024. Thereafter on 09.07.2024, the evidence of DW-1 was concluded. On 26.07.2024, fresh bailable warrants were issued to Clerk of Sub-Registrar, Patiala which was received back unexecuted and the summons issued to other two Clerks had not been received back served or otherwise and the matter was adjourned to 02.08.2024. Similar was the order passed on 02.08.2024 and the matter was again adjourned to 06.08.2024. On 06.08.2024, one DW was examined but the evidence of the petitioner was closed without complying with the provisions of Order 16 Rule 10 CPC by the trial Court.

4. Learned counsel for the petitioner has submitted that out of four witnesses, the first witness i.e. the Record Keeper from Civil Court, Kaithal has already appeared and thus he only presses the present petition for recording of the evidence of the Clerk of Sub-Registrar Ludhiana and Clerk of Sub-Registrar, Patiala as they are necessary witnesses. It is submitted that once the petitioner had done all which was required to be done by him i.e. deposited the diet money as well as process fee, then it was the duty of the Court to ensure the presence of the summoned witnesses by issuing bailable/non-bailable warrants instead of closing the evidence of the defendant. It is submitted that although the suit was filed in the year 2010



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but the plaintiff's evidence was closed on 16.04.2024 and thus, due opportunity should also be given to the petitioner to lead the evidence. It is prayed that an effective opportunity be granted to the petitioner, with the help of the Court, to examine the Clerk of Sub-Registrar, Ludhiana and Clerk of Sub-Registrar, Patiala along with the record as mentioned in the application dated 16.04.2024.

5. This Court in its earlier judgment dated 29.07.2024 passed in **CR-3734-2023** titled ***Inder Pal and another Vs. Sat Pal (now deceased) through his LRs and others***, has held as under:-

“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 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.”

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.

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 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. 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”.

6. The law laid down in the above mentioned judgment applies on all fours in the present case and accordingly, the present revision petition is partly allowed and the impugned order dated 06.08.2024 (Annexure P-1) is set aside. The petitioner-defendant No.1 is permitted to examine the Clerk of Sub-Registrar, Ludhiana (Punjab) along with GPA No.1353/4 dated 15.06.2005, GPA No.114/4 dated 07.04.2005 and Clerk of Sub Registrar,

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Patiala (Punjab) along with GPA No.2194/4 dated 06.01.2009 and is granted one effective opportunity 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 petitioner depositing with the trial Court an amount of Rs.5,000/- within a period of one week from today, which would be paid to the plaintiffs in the present case.

7. 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.

8. This Court has not issued notice to respondents No.1 and 2 as issuance of notice would delay the proceedings and would also further delay the suit filed by the plaintiff-respondents No.1 and 2 and would also result in entailing expenditure in defending the present revision petition by respondents No.1 and 2. However, in case any of the facts which have been mentioned in the present petition and has been highlighted in the present order are false or incorrect, it would be open to respondents No.1 and 2 to move an application for recall of the present order, as per law.

9. If any such application is filed, the same would be considered independently in accordance with law.

14.08.2024*D.Bansal***(VIKAS BAHL)
JUDGE**

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