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

CR-5672-2022 (O&M)
Date of decision: 02.08.2024

Satbir

...Petitioner

Versus

Dhirender and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Amit Jain, Advocate for the petitioner.

VIKAS BAHL, J. (ORAL)

1. This is a revision petition filed under Article 227 of the Constitution of India for setting aside the impugned order dated 21.11.2022 (Annexure P-4) passed by the Civil Judge (Junior Division), Gurugram whereby the trial Court has closed the oral evidence of the petitioner/plaintiffs.

2. Learned counsel for the petitioner has submitted that the petitioner had filed a suit for permanent and mandatory injunction restraining the defendant from interfering in possession of the suit property. It is submitted that the petitioner had moved an application for depositing the diet money and summoning the witnesses, which were four in number and has further submitted that the money regarding the same was duly deposited and the said fact is apparent from the endorsement on the application dated 28.10.2022 (Annexure P-3).

3. Learned counsel has referred to the zimni orders to highlight



that in spite of the fact that the summons had been issued to the said witnesses and even bailable warrants had been issued but instead of adopting further coercive steps, the Court had closed the oral evidence of the petitioner. It is submitted that as per the provision of Order 16 Rule 10 CPC, it is incumbent upon the Court to use coercive steps to procure the presence of the witnesses, in case of their non-appearance, more so, when the petitioner has done all that could have been done from his side, i.e., deposit of diet money and process fee. It is further submitted that in the present case, on 14.11.2019, the defendant had filed an application under Order 7 Rule 11 CPC and the same was decided on 27.07.2022 after a period of more than two years and eight months.

4. Learned counsel for the petitioner has submitted that in view of the said facts and circumstances, the petitioner be granted two effective opportunities with the assistance of the Court to examine his four witnesses and the impugned order be set aside.

5. A perusal of the paper book would show that notice was issued in the present case to respondent No.1, who is the sole defendant and contesting party, and the Coordinate Bench of this Court vide order dated 27.02.2023, had noted that as per the report of the Registry, respondent No.1 had been served but there was no representation on his behalf, to oppose the prayer of the petitioner.

6. This Court has heard learned counsel for the petitioner and has perused the paper book.

7. This Court had an occasion to deal with a similar prayer in CR-3734-2023 titled as “Inder Pal and another Vs. Sat Pal (now deceased)



through his LRs and others” which was decided on 29.07.2024. Relevant portion of the said judgment is reproduced hereinbelow:-

“.....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. The law laid down in the said judgment applies on all fours to the present case. A perusal of Annexure P-3 would show that the petitioner had sought summoning of the following four witnesses:-

“1. That depositing the diet money of the witnesses and



following witnesses may kindly be summoned:

- 1) Ram Govind (Jagga) son of Late Sh. Nathu Ram Sabhapati R/o Barla Bans, Ward No.11, Tehsil Rajgarh, Distt. Alwar, Rajasthan.*
- 2) MHC, Police Station Manesar, alongwith certified copy of FIR No.26/26.01.2006, u/s 147, 148, 149, 323, 436, 506 IPC.*
- 3) Kewal Kishan Punia Draftsman, Hall No.2, Distt. Courts, Compound, Gurugram*
- 4) Dalchand (Translator Urdu to Hindi), R/o Village Baghanki, Manesar, Gurugram”*

9. Further perusal of the said application would show that an endorsement was made on the said application that the diet money with respect to said four witnesses had been deposited by the petitioner. A perusal of the zimni orders, more so, orders dated 28.10.2022 and 07.11.2022 would show that three of the said witnesses were summoned and thereafter, even bailable warrants were issued. Zimni orders dated 28.10.2022 and 07.11.2022 are reproduced hereinbelow:-

“Order dated 28.10.2022:-

Present:- Shri Praveen Saini, Advocate for plaintiff.

Shri Anil Kumar Raghav, Advocate for defendant.

Cost of Rs.1000/- has been deposited in DLSA, Gurugram vide receipt No. 0037852 dated 28.10.2022. Receipt placed on record. Two PWs namely Ct. Lalit and Kewal Krishan are present but could not be recorded. Adjournment sought. Heard. Allowed. Summon issued against witness Dalchand received back unserved. Witness Dalchand be now summoned through bailable warrant. Now, to come up on 07.11.2022 for plaintiff evidence. Present witnesses are discharged for today and bound down for the date fixed.

Sd/-(Harsh Kumar Singh)

Civil Judge (Junior Division), Gurugram.

Order dated 07.11.2022:-

Present: Shri Praveen Saini, Advocate for plaintiff.

Shri Anil Kumar Raghav, Advocate for defendant.

*No PW is present. Adjournment sought. Heard. Allowed.
Now, to come up on 21.11.2022 for plaintiff evidence. Bailable
warrants be issued against witnesses Ct. Lalit and Kewal
Krishan for the date fixed.*

Sd/-(Harsh Kumar Singh)

Civil Judge (Junior Division), Gurugram.”

10. The case was thereafter adjourned to 21.11.2022 on which date, as is apparent from the impugned order, the witnesses did not appear. The Court instead of issuing non-bailable warrants and taking further coercive steps to procure the presence of the said witnesses, after adjourning the matter on two dates, had closed the oral evidence of the petitioner. Same is against settled law. Accordingly, the present revision petition is partly allowed and the impugned order dated 21.11.2022 is set aside and the petitioner is granted two effective opportunities to examine the four witnesses, which have been mentioned hereinabove, with the help/assistance of the trial Court. The trial Court would adopt the procedure for endorsing/securing the presence of the four witnesses in accordance with Order 16 Rule 10 CPC, as per settled law.

11. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

02.08.2024

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No