

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr.No.201

Case No. : C. R. No.7642 of 2019

Date of Decision : April 01, 2024

Daljit Singh Petitioner

vs.

Darshan Singh (since deceased) through his
legal heirs and others Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr. Ajit Singh Sodhi, Advocate
for the petitioner (*appeared through Video Conferencing*).

Mr. N. S. Dadwal, Advocate
for the respondents.

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GURBIR SINGH, J. :

1. Challenge in the present revision petition filed under Article 227 of the Constitution of India is to the order dated 14.10.2019, passed by learned Civil Judge (Junior Division), Jagraon (for brevity – Trial Court), whereby application moved by the petitioner/defendant no.4, for recalling the interim order dated 31.07.2019 regarding declining the request for summoning Surinder Singh as a defendant witness, has been dismissed.
2. The brief facts, necessary for just decision of the present revision petition, are that respondent no.1/plaintiff Darshan Singh filed a suit for specific performance of agreement to sell dated 10.10.2011, executed by Natha Singh @ Mohinder Singh, father of defendants no.2 to 5 and husband of defendant no.1. During pendency of the said suit, Darshan Singh died and his legal heirs were brought on record. The contesting defendants

specifically denied the execution of aforesaid agreement to sell dated 10.10.2011 on the ground that the same was forged and fabricated document as Natha Singh @ Mohinder Singh was the customer of Commission agency being run by the plaintiff and the plaintiff had got signatures of their father on various documents and thereafter, he had forged and fabricated the said agreement. The account of their father always used to be in credit in the account mentioned by the firm of the plaintiff. The stamp paper of the agreement to sell were not even purchased by Natha Singh @ Mohinder Singh.

3. Learned counsel for the petitioner/defendant no.4 has submitted that when the case came up for hearing for defendants' evidence, the petitioner/ defendant moved application for summoning witnesses in order to prove that the family of plaintiff was Commission Agents under various names. Surinder Singh was summoned as a witness. The said witness appeared in the Court but his statement was not recorded as no summons were issued to him. Thereafter, fresh summons were issued. However, counsel for the plaintiff raised issue that Surinder Singh was plaintiff and he could not be summoned and the evidence was closed by the defendants. In fact, oral evidence was closed but documentary evidence was not closed and witness Surinder Singh was called only to prove the record of the Commission Agency which was being run by him. Had the record of Commission Agency been brought in the Court, it would have proved that it was the Commission Agents who owed the money to the defendants and not vice-versa.

4. Learned counsel for the respondents/plaintiffs has submitted that

defendants have already closed their evidence and the case was adjourned for producing the documents. The suit was originally filed by plaintiff Darshan Singh. He died during pendency of the suit. His widow and sons were ordered to be impleaded through him. Surinder Singh is one of the sons of deceased Darshan Singh. He is also brought on record through the deceased. The relevant extract of the application in question reads as under :-

“Summon to Witness

*Surinder Singh S/o Darshan Singh
Proprietor/Partner of the Firm M/s. Balbir Singh &
Company Sidhwan Bet, Tehsil Raikot, District
Ludhiana with the following record :-*

- I) Cash-credit record of Rokar-Bahi Khata with
Daily Book (Rozanamacha) from 2001 to
2008 regarding the credit and advance of the
sale produce (Paddy & Wheat) by Sh.
Mohinder Singh S/o Mann Singh VPO
Rattowal, Tehsil Raikot, District Ludhiana.*
- II) ‘J’ form of the said Mohinder Singh S/o
Mann Singh regarding the sale of Paddy and
Wheat from April-2011 to Dec-2008.*
- III) Sale Purchase record of the Customers/
farmers and Rokar Bahi-Khata (Account
Books) cash-credit book, Rozana-macha of
sale purchase of produce, khata-bahi,*
- IV) And Income Tax Returns from 2001 to 2008
of M/s Balbir Singh & Company.”*

5. Since the defendants have already closed the oral evidence, so, at this stage, they could not summon the witness in their evidence. The things are required to be done in the way they ought to have been done. A three

Judge Bench of Hon'ble Apex Court in a judgment titled [Chandra Kishore Jha v. Mahavir Prasad & Ors.](#) reported as [\(1999\) 8 SCC 266](#), has held as under :

".....It is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner."

6. The said principle has also been followed by the Hon'ble Supreme Court in [Cherukuri Mani v. Chief Secretary, Government of Andhra Pradesh & Ors.](#) reported as [\(2015\) 13 SCC 722](#), wherein it has been held as under :-

".....Where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law, without deviating from the prescribed procedure....."

7. Similarly, Hon'ble Supreme Court in [Municipal Corporation of Greater Mumbai \(MCGM\) v. Abhilash Lal & Ors.](#) reported as [\(2020\) 13 SCC 234](#) and [OPTO Circuit India Limited v. Axis Bank & Ors.](#) reported as [\(2021\) 6 SCC 707](#) has also followed the said principle.

8. The defendants, after closing the oral evidence, cannot ask the Court to summon a witness in evidence by simply moving an application for summoning the witness.

9. In view of the above, I do not find any illegality or perversity in the impugned order passed by learned Trial Court.

10. Accordingly, the present petition is hereby dismissed, being

without any merit.

11. Pending applications, if any, shall stand disposed of along with this judgment.

April 01, 2024
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.