

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CR-7300-2023 (O&M)
Decided on: 22.04.2024

JASBIR SINGH THROUGH SPECIAL POWER OF ATTORNEY
SH.KULWANT SINGH

...Petitioner

Versus

SURJIT SINGH AND OTHERS

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. A.P.S. Sandhu, Advocate
for the petitioner.

Mr. KushagraMahajan, Advocate
for respondents No.1 and 2.

Service of respondents No.5 to 7 dispensed with
vide order dated 08.01.2024.

RITU TAGORE, J.

1. Mr. Kushagra Mahajan, Advocate appears on behalf of respondents No.1 and 2 and files Power of Attorney, which is taken on record, subject to just exceptions. Learned counsel for the petitioner also places on record photocopy of the plaint of case titled ‘Jasbir Singh through Special Power of Attorney Shri Kulwant Singh son of Gian Singh resident of village Rasulpur Kala, Tehsil and District Amritsar vs. Surjit Singh and others’ which is also taken on record, subject to just exceptions.

2. This revision petition is directed against the order dated 20.09.2023 (Annexure P-3), passed in Civil Suit No. CS 1057 of 2015 titled 'Jasbir Singh Vs. Surjit Singh & Others', whereby the evidence of petitioner (plaintiff before the trial Court) has been closed by Court order and order dated 14.11.2023 (Annexure P-5) by virtue of which, the application filed by the petitioner for recalling the order dated 20.09.2023 (Annexure P-3) has been dismissed.

3. Learned counsel for the petitioner urged that petitioner instituted a suit against respondents for declaration and for consequential relief of permanent injunction on various pleas as detailed in the plaint. On 29.10.2018, learned trial Court, framed the issues in the aforesaid suit. It is stated that thereafter, in January 2019, petitioner (plaintiff) moved an application (Annexure P-1) for summoning the witnesses and also deposited diet money. Meanwhile, due to spread of Covid-19 Pandemic, functioning of the Courts remained restricted and as a result, petitioner could not complete his evidence. Further, it is submitted by the learned counsel that most of the witnesses intended to be examined by the petitioner were official witnesses from the police and other Government department except the plaintiff, who despite issuance of notice and bailable-warrants did not turn up for recording their evidence. To support his submissions, learned counsel referred to *zimini* orders (Annexure P-2 colly).

4. Further referring to *zimini* orders, learned counsel stated on 20.09.2023, the counsel for the petitioner was occupied with other case, and therefore, could not attend the hearing of this case when called, as such, evidence of petitioner was closed by the learned trial Court vide order of the even date (Annexure P-3). Learned counsel stated that request of petitioner

to recall the order (Annexure P-3), explaining the inability of his counsel to appear in the Court in pre-lunch session was illegally turned down by dismissing his application (Annexure P-4) vide order dated 14.11.2023 (Annexure P-5), causing serious prejudice to the rights of the petitioner by preventing him from prosecuting his case.

5. Learned counsel stated that most of the witnesses are Government officials and are not in his control, the learned Court was required to enforce their presence on their non-appearance in the Court through coercive means as provided under Order 16 of Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC'). In support of his submissions learned counsel referred to cases **Rakesh Mohanta Vs. Maj. Gen. Amrik Singh, 1995(2) PLR 474, Deepak Chadha Vs. Rupa Anand and another, 2011 (1) PLR 378, Rakesh Khanna and others Vs. Mohini Khanna and others, 2014 (3) PLR 92, Mahant Jagmohan Singh Vs. Mahant Karamjit Singh, 2013(2) PLR 708** and **Uchhab Kanwar wife of Shri Bhanwar Singh Vs. Legal Representatives of Shri Ramswaroop son of Ganesh Lal Ahuja and two others, 1995 AIR (Rajasthan) 209** observing that when a witness does not appear despite service, it is for the Court to take coercive measures to enforce attendance of witnesses by invoking the provisions of Order 16 CPC.

6. Learned counsel for the petitioner made a prayer to afford reasonable opportunity/ies to the petitioner to present his evidence by allowing the revision petition. It is urged by the learned counsel that impugned orders dated 20.09.2023 (Annexure P-3) and order dated 14.11.2023 (Annexure P-5) are unsustainable in eyes of law and be set aside, which have scuttled the right of petitioner to lead evidence.

7. Contra, learned counsel for the respondents No.1 and 2 submits that petitioner (plaintiff), filed the suit in 2015 and despite taking numerous opportunities failed to conclude his evidence. In support of his arguments learned counsel referred to various *zimini* orders indicating the failure of petitioner to conclude his evidence. It is also stated that no valid ground is made to grant further opportunity to petitioner to lead his evidence as orders under challenge are justified and a prayer is made to dismiss the petition, being denude of merits.

8. I have heard learned counsel for the parties and gone through the paper book with their valuable assistance.

9. Suffice to say that petitioner filed a suit for declaration with consequential relief of permanent injunction against respondents. It is undisputed that issues were framed on 29.10.2018 and case was posted for the evidence of the petitioner. It is explicit from several *zimini* orders (Annexure P-2 colly) that learned trial Court issued notices to the witnesses for their presence in the Court for recording their evidence and also issued bailable warrants to procure the presence of the witnesses.

10. Order 16 Rule 10 and Rule 12 of CPC provides as under:-

“10. Procedure where witness fails to comply with summons.—

(1) Where a person to whom summons have been issued either to attend to give evidence or to produce a document, fails to attend or to produce the document in compliance with such summons, the Court—

(a) shall, if the certificate of the serving officer has not been verified by the affidavit, or if service of the summons has affected by a party or his agent, or

(b) may, if the certificate of the serving officer has been so verified, examine on oath the serving officer or the party or his agent, as the case may be, who has effected service, or cause him to be so examined by any Court, touching the service or non-service of the summons.

(2) Where the Court sees reason to believe that such evidence or production is material, and that such person has, without lawful excuse, failed to attend or to produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides. (3) In lieu of or at the time of issuing such proclamation, or at any time afterwards, the Court may, in its discretion, issue a warrant, either with or without bail, for the arrest of such person, and may make an order for the attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of attachment and of any fine which may be imposed under rule 12:

Provided that no Court of Small Causes shall make an order for the attachment of immovable property.

12. Procedure if witness fails to appear.—

(1) The Court may, where such person does not appear, or appears but fails so to satisfy the Court, impose upon him such fine not exceeding five hundred rupees as it thinks fit, having regard to his condition in life and all the circumstances of the case, and may order his property, or any part thereof, to be attached and sold or, if already attached under rule 10, to be sold for the purpose of satisfying all costs of such attachment, together with the amount of the said fine, if any:

Provided that, if the person whose attendance is required pays into Court the costs and fine aforesaid, the Court shall order the property to be released from attachment.

(2) Notwithstanding that the Court has not issued a proclamation under sub-rule (2) of rule 10, nor issued a warrant nor ordered attachment under sub-rule (3) of that rule, the Court may impose fine under sub-rule (1) of this rule after giving notice to such person to show cause why the fine should not be imposed.”

11. In ***Deepak Chadha vs. Rupa Anand & Anr., 2011(1) PLR 378***, it is held that in case, it was proved that the bailable warrants were served on the witnesses and they had not chosen to appear in the case, in that event, it was obligatory on the part of the trial Court to have issued non-bailable warrants for their arrest, or should have taken other coercive steps by writing to the Superintendent of Police, concerned or to see, that warrants were executed, but the petitioner could not be made to suffer for the lapse of executing agency, in effecting service. In the aforesaid case, impugned order whereby, the evidence of petitioner was closed was set aside and he was granted two adjournments to conclude his evidence with direction to the trial Court to use coercive method for getting the presence of the summoned witnesses in terms of Order 16, Rule 10 CPC.

12. This Court in ***Mahant Jagmohan Singh vs. Mahant Karamjit Singh, 2013(2) PLR 708*** also took the similar view that when the diet money and the other expenses have been deposited by the petitioner, the Court is duty bound to procure the presence of the witnesses. It was held that the trial Court committed a material irregularity in not compelling the attendance of summoned witnesses. Section 32 gives a right to the trial Court

to summon a witness and Order 16, Rule 10 and 12 CPC to secure attendance of the witness and accordingly, petition was allowed.

13. As noticed above, the learned trial Court issued bailable warrants against some witnesses but did not take other coercive measure like issuance of non-bailable warrant, or attachment of property, or writing to the senior administrative officer to instruct the concerned witnesses to appear, so as to bring the case to its logical end by completing the proposed evidence of the parties. The order dated 04.09.2023 reveals that bailable warrants of PWs ASI Naresh Kumar and ASI Raj Kumar were issued and except marking of presence of ASI Naresh Kumar on 20.09.2023, the learned trial Court did not mention about the presence or non-presence of witness ASI Raj Kumar, nor made any reference, if he was given up or any further measures were taken with respect to said witness and went on to close the evidence of the petitioner. The order is completely silent with respect to ASI Raj Kumar PW. In given facts, this Court is of the view that the learned trial Court completely faulted in its approach while closing the evidence of petitioner, causing great prejudice to him. The learned trial Court was obliged to take measures as mandated in Order 16 CPC to procure the attendance of the absent witness. On this aspect the order dated 20.09.2023 does not withstand judicial scrutiny and consequently the subsequent order dated 14.11.2023 (Annexure P-5), vide which application for recall of the order dated 20.09.2023 has been dismissed.

14. Learned counsel for petitioner undertakes to conclude his evidence if given reasonable time. As such, the petitioner is given three effective opportunities to conclude his evidence and the learned trial Court shall adopt all the measures to procure the presence of the summoned witnesses as mandated under the provisions of Order 16 CPC and other provisions of the

CPC.

15. Needless to mention that parties to the suit shall cooperate with the learned trial Court in expeditious decision of the case by avoiding unnecessary adjournments as case is old, pending since 2015.
16. In view of discussion above, orders dated 20.09.2023 (Annexure P-3) and order dated 14.11.2023 (Annexure P-5) are set aside.
17. Accordingly, revision petition stands disposed of in above terms.
18. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)

JUDGE

22.04.2024

Rimpal

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No