



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

112

CR-6335-2019 (O&M)

Date of Decision : 28.03.2025

KUSUM LATA

... Petitioner

VERSUS

RAJPATI AND ORS

... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Subhash Ahuja, Advocate for the petitioner.

Mr. Vikram Singh Punia, Advocate for respondent No.1.

None for respondent No.3 despite service.

ALKA SARIN, J. (ORAL)

1. The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 22.08.2019 (Annexure P-4) whereby the evidence of defendant No.2-petitioner herein was closed, and the order dated 12.09.2019 (Annexure P-6) whereby the evidence of remaining one defendant witness, namely, Surender Kumar Gupta, the power of Attorney as well as husband of defendant No.2-petitioner, was also closed.

2. Learned counsel for defendant No.2-petitioner would contend that the present is a suit for specific performance filed by plaintiff-respondent No.1 and in the said suit lists of witnesses (Annexures P-2 and P-3) were given by defendant No.2-petitioner. The witnesses, as mentioned in Annexures P-2 and P-3, are all official witnesses. Qua the official witnesses

as mentioned in Annexure P-2, diet money was deposited and qua the witnesses as mentioned in Annexure P-3, summons were also issued by the Court concerned. It is further the contention that once lists of witnesses had been given and defendant No.2-petitioner had requested the Court to issue summons for their presence, it was for the Court to ensure that the said witnesses appear in the Court. Learned counsel has further contended that in case the witnesses failed to appear, resort has to be made to the provisions of Order XVI Rules 10 and 11 CPC by the Court concerned. It is still further the contention of the learned counsel for defendant No.2-petitioner that the evidence of Surender Kumar Gupta, the power of Attorney as well as husband of defendant No.2-petitioner, was also not recorded and that given one effective opportunity the power of Attorney as well as husband of defendant No.2-petitioner would also step into the witness box and lead his evidence.

3. *Per contra*, learned counsel for plaintiff-respondent No.1 would contend that sufficient opportunities were availed by defendant No.2-petitioner for leading her evidence however she failed to lead her evidence and hence no fault can be found with the impugned orders. Learned counsel would further contend that Surender Kumar Gupta, the power of Attorney as well as husband of defendant No.2-petitioner, was creating a lot of problems in the Court, as is also reflected in the order dated 26.02.2018 (Annexure P-1) passed by this Court in a revision petition being CR-8733-2016 titled as 'Kusum Lata V/s Rajpati & Ors.' decided on 26.02.2018.

4. Heard.

5. In the present case defendant No.2-petitioner had filed lists of witnesses for summoning the official witnesses and the diet money was also deposited qua them. Qua some of the witnesses, summons were also issued however the said witnesses did not appear. Once lists of witnesses had been submitted by defendant No.2-petitioner and the diet money had also been deposited qua them, it was incumbent upon the Court concerned to ensure the presence of the said witnesses. As per the provisions laid down in Order XVI Rules 10, 11 and 12 CPC, for the non-appearance of the official witnesses, who were summoned through the agency of the Court, the plaintiff cannot be held to be responsible if the said witnesses do not appear. Qua the power of Attorney as well as husband of defendant No.2-petitioner, it has been stated in the petition that the said power of attorney holder was suffering from various ailments and hence could not appear for his examination. Learned counsel for defendant No.2-petitioner today has categorically stated in the Court that given one effective opportunity, defendant No.2-petitioner would lead her evidence.

6. Keeping in view the above noted facts, both the impugned orders are set aside. The Trial Court shall summon the official witnesses in accordance with law. Further, defendant No.2-petitioner is granted one effective opportunity to present herself to lead her evidence. However, it is made clear that as per the provisions of Order 18 Rule 3A CPC, defendant No.2-petitioner shall lead her evidence first and thereafter the evidence of the other witnesses shall be recorded.

7. It is further made clear that no further opportunity shall be granted to defendant No.2-petitioner to lead her evidence barring one effective opportunity as noted above. The Trial Court is requested not to grant any unnecessary adjournments to either of the parties.

8. The present revision petition stands disposed off in the above terms. Pending applications, if any, also stand disposed off.

9. Any observation made herein shall not be treated as an expression of opinion on the merits of the case.

28.03.2025

Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No