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

CR-7780-2023 (O&M)

Date of Decision : 19.03.2025

M/s ACC Ltd.

... Petitioner(s)

Versus

Lalit Chaudhary (deceased) through LRs

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Satvinder Singh, Advocate and
Mr. Robin Bansal, Advocate for the petitioner.

Mr. Saurabh Bajaj, Advocate for the respondents.

ALKA SARIN, J. (Oral)

1. The present revision petition has been filed by the defendant-petitioner challenging the order dated 28.09.2023 (Annexure P-1) whereby the evidence of the defendant-petitioner was closed by order and the order dated 18.11.2023 (Annexure P-2) whereby the application for recalling of the order dated 28.09.2023 was also dismissed.

2. Brief facts relevant to the present *lis* are that the present suit was filed by the plaintiff-respondent through his wife and his next friend for declaration with consequential relief of mandatory injunction. The prayer in the plaint is for issuance of a decree of mandatory injunction directing the defendant-petitioner to make the payment for the entire amount of treatment of the plaintiff-respondent alongwith interest @ 18%. The stand taken by the defendant-petitioner was that the plaintiff-respondent had consumed an overdose of sleeping pills and had tried to commit suicide. It was further the stand taken that a claim was filed with the Insurance Company which was

rejected by the Insurance Company. The defendant-petitioner herein filed an application for summoning a witness from Healthcare Services TPA (India) Private Limited. On 28.03.2023 summons were issued, however, the concerned witness did not appear despite being served and bailable warrants were issued against the said witness in the sum of ₹10,000/- with one surety in the like amount to be executed through SHO concerned. On 22.05.2023 it was noticed in the order that bailable warrants had not been received back served or otherwise and fresh bailable warrants were issued. On 14.07.2023 yet again bailable warrants were received back unserved on the ground that Star Heath Insurance Company was not working at the given address and the defendant-petitioner was directed to bring the evidence at its own responsibility. It was also noticed in the order dated 14.07.2023 that it shall be the last opportunity for defendant's evidence. On 27.07.2023, yet again, notice was issued as per the list of witnesses which had been furnished. On 21.08.2023 yet again the defendant-petitioner was directed to bring the evidence at its own responsibility. On 28.09.2023 it was noticed that the *dasti* summons could not be served on the witness due to the non-availability of the local counsel where the witness was to be served. It was also noticed in the order dated 28.09.2023, which is also the impugned order, that despite 20 opportunities, the defendant-petitioner failed to conclude its evidence and, therefore, evidence of the defendant-petitioner was closed. Thereafter, an application was filed for recalling of the said order dated 28.09.2023, which was also dismissed vide order dated 18.11.2023. Hence, the present revision petition.

3. Learned counsel for the defendant-petitioner would contend that he would require the agency of the Court to summon the said witness who is not in control of the defendant-petitioner. He, however, undertakes to complete all formalities for summoning of the said witness before the next date of hearing before the Trial Court i.e. 27.03.2025. The learned counsel would further contend that the defendant-petitioner is also willing to compensate the plaintiff-respondent by way of costs.

4. *Per contra* the learned counsel for the plaintiff-respondent has vehemently contended that numerous opportunities were granted to the defendant-petitioner to lead its evidence and infact on two separate occasions the orders were passed that the defendant-petitioner would produce the witness at its own responsibility which orders were never challenged by the defendant-petitioner. It is further the contention of the learned counsel that the suit was filed through the wife on account of the fact that the plaintiff-respondent was in a vegetative state and during the pendency of the suit he expired and his legal representatives had been impleaded.

5. I have heard the learned counsel for the parties.

6. The peculiar facts of the present case show that the witness sought to be summoned was in the list of witnesses for which the defendant-petitioner had requested that summons be issued through the agency of the Court and on two occasions there were orders passed that the witness would be produced by the defendant-petitioner at its own responsibility and it failed to get the summons served on the pretext that the local counsel was not available to serve the summons. However, in the interest of justice, one

opportunity is granted to the defendant-petitioner to complete all formalities for summoning of the witness on or before the next date of hearing before the Trial Court i.e. 27.03.2025, subject to payment of ₹30,000/- as costs to be paid to the plaintiff-respondent before the Trial Court, which shall be a condition precedent. After payment of costs and furnishing of the correct particulars/details of the witness, the Trial Court shall summon the witness accordingly.

7. It is made clear that incase the needful is not done, the present revision petition shall be deemed to having been dismissed.

8. Disposed off, accordingly. Pending applications, if any, also stand disposed off.

19.03.2025
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO