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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR-7510-2024

Date of decision : 28.01.2025

Mukesh Kumar

... Petitioner

Versus

Improvement Trust Ludhiana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Anurag Chopra, Advocate,
Mr.Vardaan Seth, Advocate and
Ms. Gauri C. Kaushal, Advocate
for the petitioner.

Ms.Ekta Thakur, Advocate and
Ms.Shikha, Advocate
for respondent no.1.

VIKAS BAHL, J.(ORAL)

1. This is a Civil Revision Petition filed under Article 227 of the Constitution of India for setting aside the impugned order dated 12.11.2024 (Annexure P-33) passed by the Civil Judge (Jr.Div.), Ludhiana, vide which the evidence of the plaintiff-petitioner has been closed by order.

2. On 08.01.2025, this Court was pleased to pass the following order:-

“Present:- Mr. Anurag Chopra, Advocate, for the petitioner.

*Inter alia, contends that there is no injunction in
favour of the petitioner, thus, any delay in the present*



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proceeding would primarily cause prejudice to the petitioner. It is submitted that for some period during which the case was pending, Covid-19 situation was prevalent. It is further submitted that the petitioner had moved an application dated 12.10.2023 for summoning the witness i.e., Concerned Clerk/Record Keeper of Ludhiana Improvement Trust to bring the complete record pertaining to the Memo No.5487 dated 08.01.1996 and the said witness had appeared on 01.12.2023 but had not brought the record and although, he thereafter had appeared on one date but did not appear on 14.03.2024. It is argued that the Court should have secured his presence by issuing bailable or non-bailable warrants. It is highlighted that from 21.10.2021 to 15.11.2022, the original file was not received. It is submitted that in case one effective opportunity is not granted to the petitioner to lead his entire evidence, then, he would suffer irreparable loss and the petitioner is ready to reasonably compensate the respondents for the inconvenience caused.

Notice of motion for 20.01.2025.

Notice re: stay as well.

Liberty is granted to the petitioner to serve the respondents through dasti process as well as through the counsel appearing for them before the trial Court.

Petitioner is directed to bring a demand draft of an amount of Rs.20,000/- in the name of respondent No.1 on the next date of hearing.

To be taken in the urgent list.

January 08, 2025”

3. Learned counsel for the petitioner has highlighted the fact that once the application for summoning the witnesses had been allowed and the

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subsequent non-appearance, the Court should have adopted coercive methods instead of closing the evidence of the petitioner. In support of the said submission, learned counsel for the petitioner has relied upon the judgment of the Coordinate Bench of this Court passed in ***Raghubir Singh vs. Dina Nath*** reported as ***2001(3) PLR 33***.

4. Learned counsel for the respondent no.1 has submitted that in the present case, the evidence of the petitioner was started on 09.11.2023 and sufficient opportunities were granted to the petitioner to lead evidence and has further submitted that the summoned witness was bound down on 05.02.2024 for 14.03.2024 but the said witness did not appear on 14.03.2024. It is submitted that the suit has been much delayed and is causing inconvenience to the respondent and for the said fact, the petitioner be directed to pay appropriate costs.

5. Learned counsel for the petitioner has submitted that in view of the objection raised on behalf of the respondent, the petitioner would only seek one effective opportunity to lead his entire evidence and would produce all his witnesses on 10.02.2025 and has further submitted that the petitioner has prepared a demand draft of Rs.20,000/- and has handed over the same to learned counsel for the respondent, who has further handed over the same to Sh.Parveen Kumar, Junior Assistant on behalf of the Executive Officer, Improvement Trust Ludhiana, who is present in the Court.

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

7. It is not in dispute that an application for summoning the



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witness i.e., concerned Clerk/ Record Keeper of Ludhiana Improvement Trust along with the complete record pertaining to Memo No.5487 dated 08.01.1996 was filed and the same was allowed and the said witness had also appeared but had come without the record and was bound down on 05.02.2024 for 14.03.2024, however, on 14.03.2024 he did not appear. In the said circumstances, it was the duty of the trial Court to adopt coercive methods to procure his presence. The Coordinate Bench of this Court in the case of **Ragbir Singh (supra)** has held as under:-

“.....If a summoned witness who has been duly served fails to appear before the Court, then it is the duty of the court to secure his presence. Order 16 Rules 8 to 10 of the Civil Procedure Code provide the procedure for procuring the attendance of the summoned witnesses. The object of the rule 10 is to enable the Court to help the parties to compel attendance of recalcitrant witness, who even though served, fails to appear without lawful excuse. It is the duty of the Court to enforce, if necessary, by coercive processes provided by the rule, attendance of witnesses required by parties. But the parties cannot be made to suffer for the non-appearance of the witnesses who have been duly served and do not appear in spite of the service of summons upon them. Procedure is meant for advancing and not obstructing the cause of justice.”

8. Keeping in view the abovesaid facts and circumstances and the fair stand taken by learned counsel for the petitioner, the present petition is partly allowed and the impugned order dated 12.11.2024 to the extent that the evidence of the petitioner has been closed by order, is set aside and the petitioner is granted one effective opportunity to lead his entire evidence.

The petitioner would produce all the witnesses which he wishes to examine



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at his own responsibility on 10.02.2025, which is stated to be the next date of hearing before the trial Court and it is only the said witnesses who are produced by the petitioner on 10.02.2025 who would be permitted to be examined by the petitioner. The trial Court would also grant due opportunity to the respondent to cross-examine the said witnesses.

(VIKAS BAHL)
JUDGE

January 28, 2025.
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No