

Before Rameshwar Singh Malik, J.

SUMER CHAND—Petitioners

versus

AMARJIT SINGH—Respondents

CR No. 274 of 2017

March 27, 2017

Code of Civil Procedure, 1908—Count closed plaintiffs evidence by opportunity to parties—Trial Court closed plaintiffs evidence by order—Petitioners deposited requisite, charges before Trial Court, for summoning two official witnesses—It was not recorded in the impugned order that any summons were issued for summoning two officials — Civil Revision allowed.

Held that once the plaintiffs have deposited the requisite charges for summoning Two official witnesses, it was the bounden duty of the learned Trial Court to ensure the presence of official witnesses by issuing summons and if after having been summoned, these officials witnesses would not come present, the Ld. Trial Court ought to have adopted coercive method to ensure their presence.

(Para 6)

Further held that it is settled principle of law that procedure are meant for advancing the cause of justice. Courts of law are duty bound to grant reasonable opportunity to both the parties to the litigation to put their best case before the Court. Impugned order set-aside – Civil Revision allowed.

(Para 8)

Raj Kapoor Malik, Advocate
for the petitioners.

R.D.Sharma, Advocate
for respondent No.2.

RAMESHWAR SINGH MALIK, J. (Oral)

(1) Feeling aggrieved against the order dated 03.01.2017 (Annexure P-11), whereby the learned trial Court closed their evidence, plaintiffs have approached this Court by way of instant revision petition filed under Article 227 of the Constitution of India, for setting aside the impugned order.

(2) Notice of motion was issued and in the meantime, learned trial Court was directed to adjourn the case beyond the date fixed by this Court.

(3) Heard learned counsel for the parties.

(4) A bare perusal of the undisputed fact, recorded in the application dated 13.09.2016 (Annexure P-12) moved by the petitioners, would show that the petitioners deposited requisite charges before the learned trial Court, for summoning two official witnesses. However, the said fact does not find mention either in the immediate next order dated 15.11.2016 (Annexure P-10) passed by the learned trial Court nor in the impugned order dated 03.01.2017 (Annexure P-11). It was not at all recorded by the learned trial Court whether any summons were issued for summoning two official witnesses mentioned in para 2 of the application (Annexure P-12).

(5) Further, the impugned order dated 03.01.2017 passed by the learned trial Court has been found to be a non-speaking and cryptic order. Having said that, this Court feels no hesitation to conclude that the learned trial Court proceeded in haste, while passing the patently illegal order, closing the evidence of the plaintiffs, because of which the impugned order cannot be sustained.

(6) Once the plaintiffs have deposited the requisite charges for summoning two official witnesses, vide application (Annexure P-12) dated 13.09.2016, it was the bounden duty of the learned trial Court to ensure the presence of official witnesses by issuing summons and if after having been summoned, those official witnesses would not come present, the learned trial Court ought to have adopted coercive method to ensure their presence. It is so said because it was not within the control of the plaintiffs-petitioners to ensure the presence of the official witnesses. They could have only deposited the requisite charges for summoning the official witnesses which they have done on their part.

(7) It is not clear from the orders (Annexures P-10 & P-11) as to why the abovesaid material fact was altogether ignored by the learned trial Court before passing these orders. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned trial Court committed serious error of law, while passing the impugned order and the same cannot be sustained, for this reason also.

(8) It is the settled proposition of law that rules of procedure are meant for advancing the cause of justice. Courts of law are duty bound to grant reasonable opportunity to both the parties to the litigation to

put their best case before the Court. Nobody should be forced to go home with the grievance that reasonable opportunity was not granted. While following the abovesaid principle of law, the learned Court would achieve twin objects; namely, (i) it would avoid multiplicity of litigation between the parties and (ii) the learned Court will do complete and substantial justice between the parties. However, since the learned trial Court failed to appreciate and follow the abovesaid principle of law in the present case, while passing the impugned order it cannot be sustained, for this reason as well.

(9) No other argument was raised.

(10) Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order has been found suffering from patent illegality, it cannot be sustained. Accordingly, the impugned order is hereby set aside. Learned trial Court is directed to grant two more effective opportunities to the petitioners to conclude their remaining evidence, including summoning of abovesaid two official witnesses mentioned in para 2 of the application dated 13.09.2016 (Annexure P-12).

(11) Resultantly, with the above-said observations made and directions issued, instant revision petition stands allowed, however, with no order as to costs.

Amit Aggarwal