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

CR-862-2020 (O&M)

Date of Decision: 08.04.2025

Tejinder Singh

....Petitioner

Versus

Mahaan Singh (Deceased) Through His LRs

....Respondent

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL**Present:** Mr. Narinder Singh Dadwal, Advocate for the petitioner.

Mr. Gurcharan Dass, Advocate for the respondent.

VIKRAM AGGARWAL, J (ORAL)

The present revision petition is directed against the order dated 16.01.2020 passed by the Court of learned Civil Judge (Junior Division), Jagraon vide which the evidence of the petitioner/plaintiff was ordered to be closed.

2. Mr. Gurcharan Dass, Advocate has put in appearance on behalf of the respondent and has filed his memorandum of appearance.

3. The facts, as emanating from the revision petition, are that a suit for recovery of Rs.1,83,600/- was filed by the petitioner/plaintiff on the basis of a pronote and receipt executed on 19.08.2008. Initially, the suit was dismissed vide judgment and decree dated 28.03.2016. An appeal was preferred. Vide judgment dated 12.10.2018 (Annexure P-2), the appeal was allowed and the matter was remitted to the trial Court after framing two additional issues. It was directed that the trial Court would grant proper opportunity to each of the parties to lead its evidence and, thereafter, decide the suit afresh. By way of the impugned order, the evidence of the petitioner/plaintiff was closed, leading to the filing of the present revision petition.

4. I have heard learned counsel for the parties.

5. Learned counsel for the petitioner submits that the impugned order is not sustainable, for, non-bailable warrants had been issued to procure the presence of witness Sohan Singh and, therefore, it was not the fault of the petitioner/plaintiff if non-bailable warrants had not been executed. He submits that only Sohan Singh has to be now examined and one effective opportunity be granted to examine the said witness.

6. On the other hand, learned counsel for the respondent has opposed the prayer stating that there is no illegality in the impugned order.

7. I have considered the submissions made by learned counsel for the parties.

8. Concededly, initially the suit for recovery was dismissed, vide judgment and decree dated 28.03.2016. An appeal (Annexure P-1) was filed which was allowed vide judgment dated 12.10.2018 and the following order was passed:

“13. So without commenting on the merits of the case, this appeal is allowed and the impugned judgment and decree, dated 28.3.2016 are hereby set aside. The case is remanded back to the Ld. trial court. Following additional issues are framed:-

1-A. Whether the plaintiff had received entire amount of pronote and receipt and executed receipt dated 6.8.2011? OPD

1-B. Whether receipt dated 6.8.2011 is a forged and fabricated document? OPP

Ld. trial court is free to frame or amend any other issue arising from the pleadings of the parties. Ld. trial court is directed to provide proper opportunity to each of the party to lead his evidence and thereafter decide the suit afresh. The defendant be given chance first to prove issue No. 1-A, then plaintiff be allowed to rebut the same. The parties through their counsel are directed to appear before the Ld. Trial court on 30.10.2018 at 10.00 a.m. sharp. Copy of this judgment be sent to Ld. trial court along with record for strict compliance. File be consigned to the record room.”

9. Thereafter, the matter was pending for evidence and while one witness Sohan Singh was not appearing and non-bailable warrants had been issued

to procure his presence, the evidence of the petitioner/plaintiff was closed on 16.01.2020 recording as under:

“Today it was last opportunity for the defendant to complete his evidence. Perusal of file shows that despite repeated opportunities which was granted to the plaintiff he has failed to procure the presence of his witnesses. Earlier nonailable warrants of plaintiff witness were issued but same were returned back with the report that he is not available at the given address. Today again nonailable warrants of plaintiff witness Sohan Singh were issued and it was told to the plaintiff that he should procure the presence of his witness by today failing to which evidence will be closed. Today again nonailable warrants are received back unserved and plaintiff has himself not appeared in Court along with his witnesses. This shows that plaintiff is intentionally delaying the proceedings of the case. Hence, plaintiff evidence is closed by order. In this case defendant had already closed his evidence during the earlier proceedings. Hence now the case is fixed for arguments on 06.02.2020.”

10. In the considered opinion of this Court, the aforesaid order is not sustainable. Concededly, non-bailable warrants had been issued to procure the presence of the said witness but the same were being received back unserved. Once non-bailable warrants were being issued by the Court to procure the presence, non-appearance of the said witness or non execution of non-bailable warrants would not be attributable to the petitioner/plaintiff. The Court concerned, therefore, committed an error by closing the evidence of the petitioner/plaintiff.

In view of the above, the present revision petition is allowed and the impugned order dated 16.01.2020 is set aside. The Court concerned is directed to grant one effective opportunity to the present petitioner/plaintiff to examine the said witness Sohan Singh on a date to be fixed by the Court concerned.

**(VIKRAM AGGARWAL)
JUDGE**

08.04.2025

Prince Chawla

*Whether speaking/reasoned :
Whether reportable :*

*Yes/No.
Yes/No.*