

(2013) 2 PLR 708**High Court Of Punjab And Haryana At Chandigarh****Case No:** Civil Revision No. 1326 of 2012Mahant Jagmohan
Singh

APPELLANT

Vs

Mahant Karamjit Singh

RESPONDENT

Date of Decision: March 4, 2013**Citation:** (2013) 2 PLR 708**Hon'ble Judges:** Daya Choudhary, J**Bench:** Single Bench**Advocate:** Rahul Sharma, for the Appellant; Alka Sarin, for the Respondent

Judgement

Daya Choudhary, J.

By this common Order, both the petitions bearing Civil Revision No. 1326 of 2012 and Civil Revision No. 1260 of 2012 are being disposed of as the parties in both the cases are same and issue is also same. However, the facts are being extracted from Civil Revision No. 1326 of 2012. The petitioner-plaintiff filed a Civil Suit for permanent injunction for restraining the defendants from interfering in the "management, control and possession" of the plaintiff over the Dera Santpura/Gurdwara Santpura along with its connected properties.

2. The claim of the petitioner was with regard to possession of the suit property on the basis of compromise dated 21.03.2000 arrived at between the parties, whereby, the possession and control of the suit properties was given to the petitioner. The said compromise has been stated to be recorded in the Register of Addan Shahi Sabha, Anandpur Sahib which has been witnessed/signed by Mahant Surinder Singh Ji, Mahant Mohinder Singh Ji and Mahant Pritpal Singh Ji. Two witnesses were present and were duly examined but Mahant Dilbag Singh did not appear on account of ill health and neither any person on his behalf along with record was present. Sant Amrit Pal Singh refused to accept notice and his presence was ordered to be secured through bailable warrants. Said Mahant Dilbag Singh sent a request by stating that the record is not traceable and bailable warrants issued were not received back served or otherwise.

3. Thereafter, the petitioner moved an application to prove the Agreement dated 21.03.2000 by way of secondary evidence which was allowed and the petitioner was permitted to prove the said Agreement by way of secondary evidence. Witnesses namely Mahant Dilbag Singh, Sant Amrit Pal Singh, Mahant Surinder Singh, Mahant Mohinder Singh and Mahant Pritpal Singh were sought to be summoned as their evidence was essential for just and proper decision of the case. The application moved by the petitioner was dismissed. Thereafter, the petitioner filed a Civil Revision No. 1260 of 2012, which is still pending.

4. The petitioner moved an application for summoning said witnesses to prove compromise and for that diet money and process fee as well as the expenses of witnesses were duly deposited. When Mahant Surinder Singh refused to appear before the trial Court and Mahant Mohinder Singh and Mahant Pritpal Singh refused to accept summons, the application moved by the petitioner to exercise his power to procure the presence of these witnesses has been declined and one additional opportunity was granted to summon these witnesses at his own cost and responsibility. The said order has been challenged by way of filing the present revision petition on the ground that the trial Court should have used coercive steps for procuring the attendance of said witnesses but the same power has not been exercised. The impugned order has been passed by holding that it was for the petitioner to secure presence of witnesses at his own level, whereas, the said witnesses are deliberately refusing to appear before the trial Court without any sufficient reason and two witnesses have refused to accept summons issued by the trial Court.

5. Learned counsel for the petitioner submits that the petitioner is entitled to get assistance of the Court to summon these witnesses. Only one additional opportunity has been granted to the petitioner to lead his evidence in spite of the fact that it is the duty of the trial Court to ensure presence of summoned witnesses.

6. Learned counsel for the petitioner has also relied upon various judgments titled as [Mohinder Singh Arora Vs. Harjit Kaur](#) , [Raghubir Singh Vs. Dina Nath](#) [Vijay Pal Vs. Daya Ram Smt. Uchhabkanwar and Another Vs. Legal Representatives of Ramswaroop and Others](#) , [Suresh Nath Modi Vs. LR's of Jorawarmal](#), and [Babu Singh and Others Vs. Ram Sahai @ Ram Singh](#),

7. Learned counsel for the respondents submits that by passing a detailed Order on 03.02.2012 by the Civil Judge (Junior Division), Jagadhri, the last opportunity was granted to the petitioner to lead entire evidence subject to his own responsibility and the petitioner wants to linger the litigation as the suit is of the year 2003 and on one pre-text or the other, the delay is being caused. The suit is for permanent injunction for restraining the defendants from interfering in the "management, control and possession" over the Dera property and being in possession, the delay is being caused. Learned counsel also submits that various applications have been filed during pendency of the appeal including the application for leading additional evidence as well as comparison of signatures on the

compromise.

8. I have heard the arguments of learned counsel for the parties and have also perused the impugned Order as well as other documents on the file.

9. Admittedly, the petitioner-plaintiff filed a Civil Suit for permanent injunction and the possession is being claimed on the basis of compromise dated 21.03.2000. The said compromise is stated to be witnessed/signed by Mahant Surinder Singh Ji, Mahant Mohinder Singh Ji and Mahant Pritpal Singh Ji and the same is recorded in the Register of Addan Shahi Sabha, Anandpur Sahib. The said witnesses have been sought to be summoned but in spite of depositing of process fee, diet money and the expenses of witnesses, they are not appearing before the trial Court for recording of their statements. The trial Court has given one last opportunity to the petitioner to conclude his evidence, whereas, the stand of the petitioner is that intentionally, those witnesses are not appearing in the Court. The compromise, due to which the petitioner in possession of the property, has been signed by those witnesses and the same is in their possession.

10. The submission of learned counsel for the petitioner is that the Court is not exercising its power to summon those witnesses and their presence is required to decide the controversy between the parties. Order 16 Rules 8 to 10 of the CPC provide the procedure for procuring the attendance of the summoned witnesses. The object of Rule 10 is to enable the Court to help the parties to compel attendance of witnesses who fails to appear without any lawful excuse. Admittedly, it is the duty of the Court to enforce by coercive processes provided by the rule, if necessary. The parties cannot be made to suffer for the non-appearance of the witnesses as the procedure is meant for advancing and not obstructing the cause of justice.

11. Order 16 Rule 10 CPC prescribes the procedure to be followed, in case, the witness fails to appear. Sub-rules (2) and (3) of Rule 10 of Order 16 reads as under:-

Where the Court sees reason to believe that such evidence or production is material and that such person has without lawful excuse failed to attend or to produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein: and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.

Sub-rule (3) of Rule 10 of Order 16 reads:

In lieu of or at time of issuing such proclamation or at any time afterwards the Court may, in its discretion, issue a warrant either with or without bail for the arrest of such person, and may make an order for the attachment of his property to such amount as it thinks fit not exceeding the amount of the costs of attachment and of any fine which may be imposed under Rule 12:

Provided that no Court of Small Causes shall make an order for the attachment of immovable property.

12. Rule 10 of Order 16 CPC shows that in the event of nonappearance by a witness, the Court is empowered to issue a proclamation as well as issue a warrant of arrest to compel the attendance of the witness. It is the duty of the Court to find out whether the process issued by it, has or has not been duly served.

13. Sub-Section (b) of Section 30 is relevant for present controversy, which is reproduced as under:-

(b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;

14. Section 32 of the Code provides penalty for default, which is as under:-

32. Penalty for default - The Court may compel the attendance of any person to whom a summons has been issued u/s 30 and for that purpose may:-

(a) issue a warrant for his arrest;

(b) attach and sell his property;

(c) impose a fine upon him not exceeding five hundred rupees;

(d) order him to furnish security for his appearance and in default commit him to the civil prison.

A conjoint reading of sub-section (b) of Section 30 and Section 32 of the CPC leads towards an irresistible conclusion that once the Court makes up its mind to summon a witness to give evidence, at subsequent stage, such court cannot express its inability to summon the witness, on the ground that some of the measures to be taken by the Court, as contemplated u/s 32 of the Code are not possible. In my humble opinion, once, the court makes up its mind to summon a witness, he should always be compelled to attend the court to give evidence, taking all measures, as contemplated u/s 32 of the Code of Civil Procedure.

15. Section 32 gives a right to the trial Court to summon a witness and Order 16 Rules 10 and 12 of the Code provides a procedure to secure attendance of the witnesses. In the present case, the petitioner has moved an application for issuance of process against summoned witnesses but the trial Court has not exercised its discretion to procure the presence of these witnesses. Admittedly, the process fee, diet money and the other expenses have been deposited by the petitioner but their presence has not been secured and the same cannot be without assistance of the Court. In the interest of justice and keeping in view the facts and circumstances of the present case, it appears that the trial

Court has committed a material irregularity in not compelling the attendance of summoned witnesses. Accordingly, both the revision petitions deserve to be allowed and the impugned Orders dated 25.02.2012 as well as 03.02.2012 passed by Civil Judge (Junior Division), Jagadhri are set aside. The trial Court is directed to ensure the issuance of process against the defaulting witnesses in accordance with law and in case, the plaintiff-petitioner fails to furnish the necessary process fee within the time fixed for enforcing the attendance of any witness then his right to get those witnesses shall be forfeited. The trial Court is also directed to grant two effective opportunities to the petitioner to examine said witnesses subject to payment of cost of Rs. 20,000/-. Parties through their counsel are directed to appear before the trial Court on 18.03.2013.

Order dasti.