
(2001) 07 P&H CK 0117
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2737 of 2001

Tilak Raj

APPELLANT

Vs

Phul Chand and Another

RESPONDENT

Date of Decision : 19-07-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 16 Rule 7

Citation : (2002) 1 RCR(Civil) 228

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : S.C. Chhabra, for the Appellant; B.R. Kaushal, for the Respondent

Final Decision : Allowed

Judgement

V.K. Jhanji, J.—In this petition under Article 227 of the Constitution of India, prayer made by the petitioner is for quashing order dated 9.4.2001 passed by the Civil Judge (Junior Division), Ferozepur, whereby bailable warrants have been ordered to be issued against him.

2. In brief, the facts are that Phul Chand son of Ramji Lal filed suit for permanent injunction against Om Parkash Jaiswal for restraining him from carrying out any construction in ahata No. 241 situated in Bazar No. 4, Ferozepur Cantt. owned by Bhola Nath Trust (Regd.), Ferozepur Cantt. After framing of the issues, case was adjourned to 10.1.2001 for evidence of the plaintiff. No witness was present on the said date and the case was adjourned to 31.1.2001. On 31.1.2001, one witness was present but since counsel for plaintiff was out of station, an adjournment was requested and the case was adjourned to 7.2.2001. On the adjourned date, examination-in-chief of one witness was partly recorded as counsel for the plaintiff wanted to exhibit Zimni order dated 10.1.2001 only indicates that defendants to the suit were directed to produce the documents on the next date. It is the admitted case of the parties that the only defendant in the case is Om Parkash and petitioner, Tilak Raj is not a defendant. On the next date of hearing, i.e. 2.3.2001, no PW was present and an adjournment was

requested and the case was adjourned to 3.4.2001. On 3.4.2001 Phul Chand, plaintiff, did not come present. The Civil Judge (Junior Division), in his order dated 3.4.2001 recorded as under: "Present: Counsel for the parties.

Neither PW Phool Chand has come present nor Tilak Raj Trustee, who was directed to bring the record has come present. Ld. counsel for the plaintiff requests for an adjournment as Phool Chand, PW, is reported to be sick. Tilak Raj who was directed to produce the record/documents has failed to comply with the direction. He is now ordered to be summoned through bailable warrants in the sum of Rs. 2,000/-with one surety in the like amount for 19.4.2001 on filing of PF/WF." Reading of the above order shows that Tilak Raj was earlier directed to bring record but was not present. On record, there is no zimni order showing that Tilak Raj was directed to bring record. Zimni order dated 10.1.2001 only indicates that defendant was directed to produce documents on the next ate. Admittedly, Tilak Raj petitioner was neither a defendant to the suit nor had been summoned as a witness.

3. Learned counsel appearing on behalf of respondents 1 and 2 has submitted that on 10.2.2001 when the statement of Phul Chand, plaintiff No. 1, was being recorded, Tilak Raj who is one of the trustees of the Bhola Nath Trust (Regd.) was present in Court and on the said date, the Court had directed him to produce the documents as it felt that the same are in his custody. On a reading of statement of Phul Chand recorded on 10.2.2001, I find that the examination-in-chief of Phul Chand was deferred and defendant Om Parkash and Tilak Raj, petitioner who were present in Court were directed to produce the original documents in Court. Since Tilak Raj was not a defendant nor had been summoned as a witness by the plaintiff, no direction could have been issued to him to produce the documents. On 19.4.2001 petitioner filed an application before the Civil Judge (Junior Division) stating that he had been served for appearing in Court on 19.4.2001 by way of bailable warrants. He further stated that he is not a party to the suit nor any diet money etc. was ever deposited by any party to the suit to summon him. He also requested the Court that he may be made aware of the circumstances under which he was summoned as a witness. He stated that he is an old man of 69 years and a patient of hypertension and the very issuance of bailable warrants has subjected him to unwarranted agony. Counsel for respondents 1 and 2 has not been able to point out that any order on this application has since been passed. Order XVI Rule 7, Code of Civil Procedure, gives power to the Court to require presence of any person for producing document but "any person" in this rule means who is a party to the suit or who has been cited as a witness to give evidence or produce document. Petitioner in this case did not fall in any of the said categories and therefore, issuance of bailable warrants qua him was totally unwarranted.

4. Consequently, the petition is allowed with costs and order dated 3.4.2001 set aside. Costs are quantified at Rs. 1,000/-, to be borne equally by respondents 1 and 2. However, respondents 1 and 2 shall be at liberty to summon the petitioner

as a witness to produce the documents, if in his custody.