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Devi Ram Vs. Ravinder Kumar

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Court : Himachal Pradesh

Decided On : May-10-2011

Judge : V.K. Ahuja, J.

Acts : Constitution of India - Article 227

Appeal No. : CMPMO No.116 of 2011

Appellant : Devi Ram

Respondent : Ravinder Kumar

Advocate for Def. : Mr. Dinesh Kumar, Adv.

Advocate for Pet/Ap. : r.Ashwani Kaundal, Adv.

Judgement :

1. The petitioner by way of this petition under Article 227 of the Constitution of India, has challenged the order passed by learned Civil Judge(Junior Division), Solan, dated 15.2.2011, whereby the evidence of the petitioner/defendant was closed by order of the Court. A notice of the petition was issued to the respondent.

2. I have heard the learned counsel for the parties and have gone through the record of the case.

3. A perusal of the record shows that the case was taken up by the learned trial Court on 15.2.2011 in pursuance of the Office Order dated 4.11.2010, referred to

in the order-sheet. It is clear from a perusal of the order dated 15.2.2011 that the case was not fixed for that date but may be the Presiding Officer was not present on the last date and a direction was issued that the case shall be taken up on 15.2.2011, as appears from the Office Order dated 4.11.2010.

However, the fact remains that the case was taken up for evidence and the learned trial Court observed that no DWs were present and passed the following order :

> **"No DWs present despite several opportunities. It is already 4.15 pm. Despite repeated callings through out the day none has appeared on behalf of the defendant. It is observed that the witness has appeared after court time was over. Despite several opportunities defendant has failed to produce his remaining evidence and, as such, the evidence of the defendant is closed by the order of this court."**

4. It is clear that the evidence was closed, since no DWs had appeared. However, at the time of passing of the order, the learned trial Court in the said order observed that the witnesses had appeared after the Court time was over and the case was taken up by the learned trial Court at an earlier point of time. Therefore, at the time of passing the said order of closing the evidence of the petitioner by the order of the Court, the Court could have recalled its order once witnesses had appeared when the order was passed. There was justification to give date to the defendant to produce the evidence when his witness appeared for the date fixed.

5. In view of the above, the impugned order dated 15.2.2011 is set aside and the petitioner shall be given an opportunity to produce his evidence before the learned trial Court by producing evidence on own responsibility. However, it is clarified that as far as possible only one opportunity shall be given to the defendant to produce his evidence by taking Dasti summons. The parties are directed to appear before the learned trial Court on 30th May, 2011. The petition is disposed of accordingly.

6. Copy dasti to both the parties.

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