

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

**CR-1724-2020
Decided on:-01.09.2022**

Gurjit Singh

....Petitioner...

vs.

Kartar Singh and another

....Respondents.

CORAM:HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Atul Goyal, Advocate,
for the petitioner.

HARKESH MANUJA J.(Oral)

Petitioner is the plaintiff, who moved an application for summoning of witnesses through the process of court but the learned trial court vide impugned order dated 05.09.2019 (Annexure P-3), dismissed the said application by recording that the issues in the suit were framed on 28.05.2019 and since, the list of witnesses along with process fee was not filed within the prescribed period of 15 days, the petitioner/plaintiff was not entitled for court assistance for the purpose of summoning of his witnesses.

2. Learned counsel for the petitioner refers to Order 16 Rule 1 of the Civil Procedure Code, to contend that the same being procedural in nature has to be considered as directory and not mandatory. For this, he places reliance upon the judgment of this Court, in case titled as "*M/s Steel Authority of India Ltd. vs. M/s Steel Strips and Tubes Ltd.*", 2007(3) RCR (Civil) 635, wherein it has

been said that Order 16 Rule 1 of the CPC is not mandatory but is directory in nature. The relevant portion from para 6 of the aforesaid judgment is reproduced herein under for reference:-

“The order 16, Rule 1 of the Civil Procedure Code cannot be said to be mandatory, but only directory and the learned trial court, therefore, was right in coming to the conclusion that the procedural laws are meant for advancement of justice and not to subvert the same.”

3. I find merit in the contention raised by learned counsel for the petitioner. The issues in the present case were framed on 28.05.2019 and the application for seeking court assistance for the purpose of summoning of witnesses was moved on 05.09.2019, which cannot be treated to be highly belated. Though, a period of 15 days has been prescribed under Order 16 Rule 1 of CPC for the purpose of providing list of witnesses to the Court, however, once the court has been given power under sub-Rule 3 of Rule 16 to permit any party to summon any witness other than the witnesses named in the list referred to in sub-rule 1, the procedure prescribed under sub-Rule 1 of Order 16 has to be treated as directory, particularly, when it nowhere prescribes consequences for its default. Further, once a procedural discretion vests with the court, unless any party acts in a gross negligent manner, discretion needs to be exercised in favour of the parties rather than to scuttle their rights.

In view of the reasoning recorded herein above, the impugned order is hereby set aside and keeping in view the fact that the suit before the learned trial court is still pending for the purpose of recording of petitioner-plaintiff evidence, learned trial court is

