

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

CR No. 2436 of 2014 (O&M)

Date of decision: March 13, 2015

Gram Panchayat

...Petitioner

Versus

Shakuntala Devi

...Respondent

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

1. **Whether Reporters of local papers may be allowed to see the judgment ? Yes**
2. **To be referred to the Reporters or not ? Yes**
3. **Whether the judgment should be reported in the Digest? Yes**

Present: Mr. SS Kanwal, Advocate,
for the petitioner.

Mr. Munish Gupta, Advocate,
for the respondent.

K. KANNAN, J. (Oral)

1. The petitioner is aggrieved the defendant, who has suffered an adverse order in the course of the trial of the suit. The plaintiff had brought a witness and his examination-in-chief was tendered through an affidavit. In the cross-examination by the defendant, he was able to elicit some answers which were in contradictions to the statement made in the chief examination. The plaintiff had sought for an oral request that the witness had admitted to some matters which were against the proof affidavit in lieu of the chief examination and, therefore, he should be treated as hostile and permitted to be cross-examined. That permission has been granted.

2. The procedure adopted by the trial court is not tenable in law.

Section 154 of the Evidence Act (for short 'the Act') enacts a rule of

procedure which is at once essential rule of justice. Section 154 of the Act reads thus:-

“154. Question by party to his own witness.—[(1)] The Court may, in its discretion, permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party.

[(2)] Nothing in this section shall disentitle the person so permitted under sub-section (1), to rely on any part of the evidence of such witness.]”

3. Section 154 of the Act must be read in context what is permissible in the chief examination and what is the liberty which is allowed in the cross-examination. A party that calls a witness will be permitted to elicit what he wants the witness to state. Section 141 of the Act states that any question suggesting an answer which the person putting it wishes or expects to receive, is called a leading question. Section 142 of the Act states that the leading question must not, if objected to by the adverse party, be asked in examination-in-chief or in a re-examination, except with the permission of the Court. Section 146 of the Act allows a witness in the cross-examination to be permitted to be tested on his veracity or his position or ask any question to shake his credit, by injuring his character. The cross-examination, therefore, allows for certain liberties which the chief-examination does not permit. The edifice of trial by evidence is built on the procedure of chief, cross and re-examination, as outlined under the Evidence Act under Chapter X. The expression 'hostile witness' itself is not used under the Evidence Act, but it is understood by all courts by judicial practice that a person who calls a witness will not be entitled to put any question which may be put in the cross-examination by the adverse party. This will be possible only in a situation where the court

may in its discretion allow for such a deviation. That discretion again is governed through the case law about how a court in its endeavour to secure justice and truth at trial finds that the witness has conducted himself in such a way that he should be allowed to be cross-examined by the party who has led him in chief. This power shall be exercised sparingly to such situation of hostile conduct exhibited at a trial. This cannot be invoked by a party for the only reason that the witness whom he brought has stated in the cross-examination something which is contrary to what was stated in the chief-examination. The very idea of cross-examination is to call the bluff any assertion made in the chief examination or establish a 'lie' or 'exaggeration'. In this case, the plaintiff's witness originally in the affidavit of chief examination stated as under:-

“They have converted the katcha gohri into metaled road by putting earth and concrete etc. to the height about 2 to 3 feet than the original level and from the level of the land of plaintiff.”

However, in the cross-examination, it was elicited as under:-

“I am not owner of any land adjoining to the said passage. It is correct that the pucca gohri has been converted into pucca one at the same level.”

4. He was, therefore, admitting that *pucca gohri* that was constructed actually was same level as the adjoining passage. The defendant would be entitled to rely on such admission and that cannot be diluted by permitting him to be cross examined by plaintiff again. The discretion exercised by the court was wholly improper, for, an adverse answer in the cross-examination cannot be treated by the plaintiff as affording him to an opportunity to treat him as hostile. The party litigant must choose his witnesses and if he places before the court a witness is

fragile or who cannot stand the rigor of cross-examination, he takes the consequences of what he does. The practice of allowing for a witness to be treated as a hostile is always done in extraordinary circumstances and in a recent judgment in Shobhana Sahadev Shah & Ors vs Mrs. Sangeeta Porbanderwala & Ors (2013 (5) Bombay CR 92, the Bombay High Court observed that even when a doctor was summoned to speak about a will and he was not giving a favourable version regarding the mental health of the testator to be not good which was elicited in the chief examination, the court did not allow the plaintiff to treat him hostile on an observation that the endeavour of the court shall be to secure the truth and if a person on oath, who understood the solemnity of the proceedings makes a statement he will not be treated hostile merely because it is inconvenient to the person who brings him to the court. That principle ought to be applied with a greater force in this case, for, it is a situation where a witness being brought to court by the plaintiff does not resile from his stand even in the chief examination or does not decline to give evidence, although he has submitted proof affidavit as evidence in examination in chief. It is a case where after cross-examination a witness is sought to be treated as hostile. The court simply had no power to treat him hostile at that time. The discretion exercised is erroneous and the recall for cross-examination by the plaintiff is set aside and if any evidence has already been taken, it shall be eschewed.

5. The revision petition is allowed on the above terms.

March 13, 2015
prem

(K.KANNAN)
JUDGE