

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 3555 of 2015
Date of Decision: 28.5.2015.

Inder Mohan Singh @ Peter (deceased) through LRsPetitioners

Versus

Jagdish T Mirchandani and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. R.S.Chahal, Advocate
for the petitioners.

SABINA, J.

Petitioners have filed this petition under Article 227 of Constitution of India challenging the order dated 8.4.2015 whereby application moved by plaintiff No. 1 for her examination as a witness in rebuttal, was allowed.

Learned counsel for the petitioners has submitted that the Trial Court has erred in allowing the application. Plaintiffs have filed suit through their attorney and merely because plaintiff No. 1 is visiting India is no ground to allow her to appear as a witness in her rebuttal evidence. In support of his arguments, learned counsel has placed reliance on '**M/s Bagai Construction Thr. Its Proprietor Mr. Lalit Bagai Versus M/s Gupta Building Material Store, 2013(3) RCR (Civil) 304**', wherein it was held as under:-

“After change of various provisions by way of amendment

in the Civil Procedure Code, it is desirable that the recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time. This Court has repeatedly held that courts should constantly endeavour to follow such a time schedule. If the same is not followed, the purpose of amending several provisions in the Code would get defeated. In fact, applications for adjournments, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be considered. We are satisfied that the plaintiff has filed those two applications before the trial Court in order to overcome the lacunae in the pleadings and evidence. It is not the case of the plaintiff that it was not given adequate opportunity. In fact, the materials placed show that the plaintiff has filed both the applications after more than sufficient opportunity had been granted to it to prove its case. During the entire trial, those documents have remained in exclusive possession of the plaintiff, still plaintiff has not placed those bills on record. It further shows that final arguments were heard on number of times and judgment was reserved and only thereafter, in order to improve its case, the plaintiff came forward with such an application to avoid the final judgment against it. Such course is not permissible even with the aid of Section 151 Civil Procedure Code. ”

Plaintiffs have filed suit for declaration that they along

with the defendants were owners in possession of the house in question. During the course of arguments, I have gone through the written statement filed by the petitioners-defendants. A perusal of the same reveals that a preliminary objection was taken by defendant No. 1 that the suit filed by the plaintiffs through their attorney, was not maintainable.

Although, in the present case, the attorney on behalf of the plaintiffs has appeared in the witness box while plaintiffs were leading their evidence in the affirmative but it appears that by way of abundant caution, plaintiff No. 1 wants to appear as a witness in order to state her case. The application (Annexure P-5) moved by the plaintiff No. 1 for permission to appear in the witness box is not happily worded but in the interest of justice, it would be just and expedient to allow plaintiff No. 1 to appear in the witness box in view of the preliminary objection taken by defendant No. 1 in the written statement.

Thus, the impugned order does not call for any interference as it is just and fair. The judgment relied upon by the learned counsel for the petitioners fails to advance the case of the petitioners as it is based on different facts.

No ground for interference by this Court is made out.

Dismissed.

**(SABINA)
JUDGE**

May 28, 2015
Gurpreet