

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

(1) CR No. 3595 of 2014 (O&M)
Date of decision: March 30, 2015

Jasvir Singh and another

...Petitioners

Versus

Jaspal Singh

...Respondent

(2) CR No. 8375 of 2014 (O&M)

Jasvir Singh and another

...Petitioners

Versus

Jaspal Singh

...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. Ajay Pal Singh, Advocate,
for the petitioner in CR No. 3595 of 2014.

Mr. Jatinder Singla, Advocate,
for the petitioners in CR No. 8375 of 2014.

Mr. P.S. Salar, Advocate,
for the respondent in both the cases.

K. KANNAN, J. (Oral)

1. This order shall dispose of the above titled two revision petition
are they arise out of the same set of facts.

2. When the plaintiff had examined some witnesses and he was
taking time for production of a hand writing expert, defendants moved an

application under Order 17 Rule 1 proviso that the case could not have been adjourned for more than three times in the manner contemplated under Order 17 Rule 1 of the Code of Civil Procedure (for short '**the Code**'). To the best of my own experience, this provision is observed only in breach and seeking for adjournment is the watchword in courts. If only a Judge does not grant adjournment, he earns the odium from the Bar and there is hardly any scope that discipline can be enforced the way we behave ourselves in the court.

3. If in this case, the defendants were applying for closing the evidence because the plaintiff had availed more than three opportunities, the court must only be sensitive to see whether there was any undue advantage which a person was trying to secure or whether the trial of the court was being impeded by any unreasonable conduct. Adjournments not beyond three times is salutary so long as the parties would stick to the schedule. It is not a mandate that will take away the power of the court to grant more than three adjournments and if he does, no person can assume that the court was acting beyond jurisdiction. The provision is purely directory and an exhortation that unnecessary adjournments shall not be taken in court. The only way that any discipline can be enforced is by imposition of costs to cause reparation for the inconvenience caused to the party who comes to the court being ready but the other side takes times indefinitely. The court cannot merely close the evidence because three opportunities have been exhausted. It has still to see whether there was any circumstance to grant an adjournment or whether the party was taking undue advantage by not producing the evidence. I find no such consideration of the issue and the side has been closed only because more than three opportunities have been

taken. This court, while ordering notice in CR No. 3595 of 2014, had allowed for the plaintiff to have the hand writing expert examined and directed the matter to be closed. At the same breath, this court had also observed that the plaintiff would disclose whether he would want any more witness on the next date of hearing. It appears that the hand writing expert was examined and the plaintiff was giving proof affidavit of himself as PW6 and witness as PW7 to prove the readiness and willingness. He had sought for an adjournment to await the decision of the court to know whether the continuation of cross-examination of PW6 and PW7 could go on.

4. The counsel appearing on behalf of the defendants would contend that the plaintiff had misled the trial court by allowing the proof affidavits of PW6 and PW7 to be brought on record, when the only option left to him, as per the direction of this court in CR No. 3595 of 2014, was to give details of any other witness that may become necessary. This is particularly so in view of the plaintiff's own assertion that apart from the hand writing expert there was no other evidence necessary.

5. I will only take the filing of the proof affidavits of PW6 and PW7 as not regular without taking the permission of the court, but no prejudice can be said to have resulted. After all, cross-examination has not commenced. The counsel for the plaintiffs informs the court that PW6 is the plaintiff himself and PW7 speaks about the readiness and willing of the plaintiff to perform his part of the contract. Although under Order 18 Rule 3A of the Code requires the parties to be examined first before calling the witnesses, it is simply a practice that is not followed in many of the subordinate courts in Punjab and Haryana. The provision requiring the parties to be examined first was inserted by Act 104 of 1976 for a salutary

purpose of bring the assertion of the respective parties first before other witnesses could be brought and to ensure that a party does not cover up every lacuna in evidence of what are brought through witnesses in cross-examination. It is time that discipline at the trial and the statutory provision regarding Rule 3A of the Code is strictly followed. Even if prior permission is not taken before the commencement of trial, it shall be sought at least at the time before the party is examined. Even this is not being done in our courts. The parties assume that a witness can be examined in any order and the parties can also bring their own versions at any time they wish. Any breach of this rule will be viewed seriously and may result in eschewing the evidence of the parties, if no permission is taken under Order 18 Rule 3A of the Code to examine the party after examination of witnesses. I would issue this directive to apply in all future cases, so that it does not cause any serious dislocation and the parties and more particularly, the Bar which aids and advises the litigants is sensitive to the statutory provision under Order 18 Rule 3A of the Code and the consequences of not complying with the mandate. If, in future, any party does not offer his or her evidence first and brings third party witnesses first and later offers to tender evidence without taking prior permission, the opposite party may oppose such evidence before the party's evidence is tendered. The trial court shall not permit evidence to be given unless, it sets out reason in writing why such permission is being given. In Gurmail Chand Vs. Ashok Verma 2004 (3) RCR (Civil) 164, this court had held that if witnesses other than party was examined and party is examined later, no objection could be taken. In my respectful view, it will amount to putting the cart before the horse. Objections could be rightfully taken only when the party shows up to tender

evidence and not when third party witness is given.

6. As of now, I would take that the examination of the plaintiff is essential and the proof affidavit given as PW6 is ordered to be received and also the affidavit of PW7 is ordered to be received. The respective parties would be cross-examined by the defendants. The closure of the evidence by the plaintiff on the application of the defendants is set aside and the plaintiff will conclude his evidence on the cross-examination of PW6 and PW7 and the defendants will have their own turn subsequently. The permission granted by the court to allow for the evidence is upheld and the same does not require any intervention. Both the revision petitions are dismissed and the rest of the evidence will be concluded in the manner, referred to above.

March 30, 2015
prem

(K.KANNAN)
JUDGE