

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

(110)

CR No.4783 of 2015

Decided on: July 31, 2015.

Chhinder Singh and others

.... Petitioners

Versus

Charan Kaur and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. H.S. Bhullar, Advocate,
for the petitioners.

M.M.S. BEDI, J (ORAL)

This petition has been filed by the plaintiffs-petitioners, aggrieved by order Annexure P-3 dated 04.07.2015, dismissing the application filed by the plaintiffs-petitioners under Section 60 of the Indian Evidence Act for striking of the inadmissible evidence (hear-say) mentioned in the affidavits as examination-in-chief of DWs i.e. DW-1 Dilbagh Singh, DW-2 Charan Kaur and DW-3 Bhupinder Singh.

The plaintiff-petitioners claim that the Court below has acted illegally in dismissing the application and keeping the objections open till the stage of final arguments. He has vehemently contended that inadmissible evidence should be out-rightly rejected and should not be permitted to be brought on the record.

Learned counsel for the petitioners has placed reliance on the judgments in Jasjit Singh and another Vs. Prem Harjit Singh and another, 2012 (4) Civil Court Cases 254, Girdhari Lal Vs. Ritesh Mahajan and another, 2005 (2) RCR (Rent) 426 and R.V.E.

Venkatachala Gounder Vs. Arulmigu Viswesaraswami & V.P. Temple and others, 2003 (4) RCR (Civil) 704, in support of his contentions that the documents which are inadmissible in evidence should not be permitted to be produced in evidence.

I have heard learned counsel for the petitioners and carefully considered the contentions.

So far as the judgments cited by counsel for the petitioners are concerned, these pertain to the admissibility of the documents to be determined at the time of their production. There is no dispute regarding the proposition that admissibility of evidence produced by a party should be objected to at its inception. Whether the said objection should be sustained at the time it is raised or it should be deferred till the final disposal of the case, depends upon facts and circumstances of each case. In this context the observations of the Apex Court in **The Roman Catholic Mission Vs. The State of Madras and another, AIR 1966 SC 1457** may be referred to wherein it has been held that the objections regarding admissibility of documents in evidence may be classified into two classes i.e. (i) an objection that the document which is sought to be proved is itself inadmissible in evidence and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. It was held in the said case that out of the two types of objections, referred to hereinabove, in the latter case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in superior

Court.

All the judgments cited by learned counsel for the petitioners referred to the production of documentary evidence. In the present case, the objection raised by the plaintiffs-petitioners is to the oral evidence which has been produced in the shape of examination-in-chief under the provisions of Order 18 Rule 4 CPC. The said amended provisions in CPC incorporated in the year 2002 enables the recording of examination-in-chief in the shape of an affidavit. Wide powers have been given to a Court regarding the documents which have been filed, regarding the determination of production of admissibility of the documents as per the proviso added to Order 18 Rule 4 CPC.

In the present case, the defendants have produced affidavits under Order 18 Rule 4 CPC. The petitioners have got a right to challenge the admissibility, relevance or authenticity of any document produced along with the affidavit but the objection of the plaintiffs-petitioners in this case is not pertaining to the documents but is pertaining to the averments in the shape of affidavit in examination-in-chief.

I am of the considered opinion that the provisions of the Indian Evidence Act enabling the counsel for a party to cross-examine the witness is a sufficient safeguard to test the veracity of a witness, to shake his credit and to prove him false impeaching his credibility. Provisions of the Indian Evidence Act regarding examination-in-chief, cross-examination and the relevant questions which are relevant for cross-examination as contained in Sections 137 to 154 provide sufficient guidelines and safeguards in this context. The present case is not a case regarding determination of inadmissibility of the documents as such the judgments cited are not

relevant for adjudication of the present revision petition. The rights of the plaintiff-petitioners to impeach the credibility of the witnesses and to establish the averments in examination-in-chief in the shape of affidavits under Order 18 Rule 4 CPC stand safeguarded by keeping all the objections open to be decided at the stage of final arguments. If any statement is inadmissible in examination-in-chief the same can be questioned and avoided for its relevance and admissibility at final stage.

No ground is made out for interference in the order passed by the Court below.

Dismissed without prejudice to other rights of the petitioners.

(M.M.S. BEDI)
JUDGE

July 31, 2015
harsha