

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.6379 of 2014

Date of decision: March 12, 2015.

Chander Kala

... **Petitioner**

v.

The Inderprastha Cooperative Housing Building Society Ltd. etc

... **Respondents**

CORAM: **HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON**

Present: Shri Rakesh Nehra, Advocate, for the petitioner.
Shri Surender Singh Dalal, Advocate for respondent No.1.

Dr. Bharat Bhushan Parsoon, J. (Oral):

Request of defendants No.1 and 2 to examine certain witnesses having been allowed vide order dated 26.8.2014 of the lower court, forms genesis of this revision petition. Out of the witnesses sought to be examined by defendants No.1 and 2, some witnesses have already been examined by the plaintiff-petitioner herein. The defendants had also cross examined all these witnesses at length.

In fact, five of such witnesses of the plaintiff, petitioner herein, when were sought to be examined by the defendants, an objection was raised by the plaintiff that such witnesses having already entered the witness box for and on behalf of the plaintiff, could not be examined by the defendants.

Observing that it was for defendants No.1 and 2 to decide as to the witnesses they want to examine, objection of the plaintiff was over-ruled on the plea that the plaintiff would get an opportunity of cross examining the witnesses to be produced by the defendants.

The petitioner-plaintiff has preferred the revision petition claiming that the impugned order suffers from patent illegality as the witnesses having been examined by the petitioner-plaintiff could not be forced to enter the witness box on behalf of her adversary.

Counsel for the respondent-defendants, on the other hand, has urged that since it is their turn now to lead evidence, they cannot be restricted in their domain and sweep of leading evidence of their choice.

During the course of arguments addressed by Counsel for the parties, when paper book has been perused, it is absolutely clear that the defendants No.1 & 2 in their list of witnesses have entered names of five witnesses (in a total list of nine), who have already been examined by the petitioner-plaintiff.

To call an adversary in the witness box as his witness by a party, cannot be conferred legitimacy in law. Similarly, calling upon witnesses of one party by an adversary as his own, is not only an adventure to pierce the integrity of the case of such party who has already examined such witnesses but is a deprecable move. It may be noticed that a similar situation had once emerged before High Court of Delhi in Jatinder Singh Bhatia v. State, 2008 Law Suit (Del) 1655. Para 21 of the said judgment with approval is reproduced as below:-

*“21. The practice of a party calling the opposite party as witness has even otherwise been deprecated by the courts as an unhealthy practice. See **Kaliaperumal v Pankajavalli** (1999) 1 MLJ 97. In the present case the objector seeks to recall a witness examined by the petitioner and whom the objector had earlier cross examined, but now wants to examine the said witness as his own.*

*In my opinion such practice also needs to be curbed and is equally unhealthy as a practice of calling the opposite party as a witness. As far back as in **Ramjag Ahir v Emperor** AIR 1928 Patna 203 it was held that a prosecution witness not called by the prosecution, cannot be permitted to be cross examined by the prosecution. Again, in **Vadde Sanpangi v Beccani**, MANU/AP 0329/1998 it was held that there is no provision in the CPC which permits a party to examine a witness of another party on his side. It was further held that such practice is not desirable as it might lead to endless examination of the same witness and lead to undesirable consequences in conducting the trial.”*

The impugned order reveals that this important issue of calling witnesses of adversary as his own by a party, did not engage the attention of the court it required. It is to be specifically mentioned that having noticed that five of the witnesses in the list of witnesses of defendants No.1 and 2 had already been examined by the plaintiff and had been subjected to cross examination by these defendants, the lower court had made the following observations:-

“Moreover, it is for the defendants No.1 & 2 to see as to whom they want to examine in their evidence, it is not for the plaintiff to decide as to whom defendants can examine or not. Moreover, the plaintiff would get an opportunity of cross examining the witnesses produced by the defendants. Hence, the application being devoid of merit stands dismissed.”

These observations far from being convincing, rather militate against the basic principles of jurisprudence concerning examination of witnesses.

Deprecating the move of the defendants to examine witnesses of the plaintiff, on whom the defendants, respondents herein, have already effected full length cross examination, reversing the impugned order, defendants No.2 and 2 are debarred from examining the witnesses already examined by the plaintiff and cross examined by them at length. It may be mentioned here that they are also not allowed to recall them for further cross examination.

The petition is allowed in the above terms.

[Dr. Bharat Bhushan Parsoon]
Judge

March 12, 2015.
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1. Whether Reporters of local papers may be allowed to see the judgment ?
2. Whether to be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?