

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

Date of decision: 16.10.2015

(1) CR No. 6571 of 2014 (O&M)

Sucha Singh

... Petitioner

versus

Ajmer Singh and anr.

.... Respondents

(2) CR No. 6572 of 2014 (O&M)

Sucha Singh

... Petitioner

versus

Ajmer Singh and anr.

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Paramjit Batta, Advocate,
for the petitioners.

Mr. G.S. Punia, Sr. Advocate,
with Ms. Harveen Kaur, Advocate,
for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment ? No
2. To be referred to the reporters or not ? No
3. Whether the judgment should be reported in the digest ? No

K.Kannan, J.

Both civil revision petitions are against order disposing of an application for the defendant to be examined in commission or through video conferencing by a party who is in USA. Apart from the personal inconvenience which he pleads, defendant has also apprehension that the plaintiff is a very influential person and he has

involved the petitioner's mother and sister in some civil and criminal litigation and he apprehends his own safety will be at peril if he comes to India.

The requirement of the party being present in court so that the court can observe the demeanour has suffered a legislative dent by an amendment under Order 26 providing for commissions to be issued for examination of persons as witnesses. Order 26 Rule 4 CPC provides that a court may issue the commission for examination of interrogatories or otherwise any person residing beyond the local limits of court's jurisdiction. It is no longer possible for any person to object to the commission to plead that the personal attendance of the parties shall not be dispensed with. From the way the amendment has come about there have been judicial innovations as well. In fact a case relating to examination of a witness, the Supreme Court ruled in **State of Maharashtra versus Dr. Praful B. Desai (2003) 4 SCC 601** that court may resort to video conferencing in an appropriate case where the party/witness is not put to any inconvenience. If a commission could be issued for examination of party living outside the court's jurisdiction, *a fortiori*, the same reasoning ought to be applied as justification of evidence through video conferencing.

Learned Senior counsel appearing on behalf of the respondents states that some documents have to be confronted to the party and video conferencing will make it difficult for the respondents

to confront and elicit his evidence. The technology is reasonably well-advanced for making it possible for confronting even documents in close proximity to the camera so that the person at the other end has clear view of the document which is confronted. The only protection that an opponent would require against the party who is given benefit of video conferencing is that the party does not have any prompting and is in a protected, secure place where there is no scope for any manipulation of evidence or prompting to be given by anyone else. That can also be adequately ensured if a video conferencing is done from any public premises under government control or under the auspices of a local authority which can vouch for appropriate protection against any prompting to be done. The petitioner himself is at liberty to choose a place which shall be a public authority where such facility is available and inform the court within a period of four weeks. Alternately, the petitioner will identify the Indian Consulate in the nearest place from his residence and produce the court order to secure the permission for hearing. The petitioner will make himself available during the court working hours in India and give a date which is mutually convenient to the court and the Consulate or the Public Office. The entire exercise of identifying the time and place shall be done within a period of four weeks so as to culminate and conclude the evidence as expeditiously as possible.

The order already passed is set aside and the revision

petitions are allowed with aforesaid observations.

All the expenses relating to the examination of the defendant on video conferencing will be only borne by the defendant irrespective of the final result of the case.

(K.KANNAN)
JUDGE

16.10.2015
sukhpreet