

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

Civil Revision No.6594 of 2014 (O&M)

Date of decision: 10.03.2015

Kulbhushan Kumar Bagga, Retd. Chief Manager (Establishment),
Punjab State Warehousing Corporation, SCO No.74-75, Sector 17-
B, Chandigarh.

... Petitioner

versus

Brijbhushan Bagga son of late Shri Balram Bagga, resident of House
No.1140/5, Adampur, District Jalandhar.

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Ms. Jagdeep Bains, Advocate,
for the petitioner.

Mr. Anupam Singla, Advocate,
for the respondent.

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.**

K.Kannan, J. (Oral)

1. I find no cause for intervention for the amendment sought for deletion of the expression "belief" in the jurat of the affidavit filed as evidence of chief examination. Though wholly inconsequential, it was an attempt to respond to an argument urged by the counsel appearing on behalf of the respondent that the affidavit must be eschewed. There is invariably certain lapse of the counsel who prepare the affidavits to be signed by parties. The manner of how affidavits shall be prepared and proved are set forth

under Order 19 CPC. Rule 1 CPC sets out the power of the court to require any fact to be proved by affidavit. There has been an amendment to Order 18 Rule 4 CPC that the examination-in-chief shall be on an affidavit and copies thereof shall be required to be served to the opposite party. The manner of how the affidavit shall be prepared is not anywhere set forth under Rule 4 CPC but if the affidavit were to substitute examination-in-chief, it must be expected that the affidavit shall contain only what could be stated by the party as known to him and it cannot include what is hearsay. The affidavit which is prepared, therefore, must be a reference to facts which a person knows and it cannot be with reference to matters where he has no personal knowledge but he has only a belief in what he has heard or seen or perceived by what is actually perceived by senses. In ordinary parlance, belief could also extend to what is actually perceived by senses. In such a situation even an aspect of belief may not be necessarily hearsay but may also include a direct evidence of what a person has known.

2. Courts have, however, maintained a difference between a fact that a person has knowledge of and a fact that a person has belief in. Rule 3 of Order 19 CPC refer to what matters the affidavit shall be confined to. This provision brings out the dichotomy between what is legally accepted as knowledge and that which is a matter of belief. Rule 3 of Order XIX CPC reads as follows:-

“3 . Matters to which affidavits shall be confined—

(1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted;

Provided that the grounds thereof are stated.

(2)

The Supreme Court has held in **Quamarul Islam Versus S.K.Kanta and others-1994 AIR (SC) 1733** that in a case under Representation of People Act where rules of pleading have to be construed very strictly, the averments in a petition under the Representation of People Act as regards the matters of personal knowledge must be set forth distinctively from matters based on belief or information. The Supreme Court underscored the importance of setting out clearly in the verification of the matters which are within personal knowledge distinctly from matters which are based on information and belief. Even before this decision, in a more elaborate consideration of the requirements of Order 19 Rule 3 CPC in **Shivajirao Nilangekar Patil Versus Dr. Mahesh Madhav Gosavi and others-1987 AIR (SC) 294**, the Supreme Court had held that the basis of knowledge or source of information must be clearly stated whenever a matter is verified as within the knowledge of a person. The court also held that if there was any information based on belief, the verification

must also set how much of the statement was of his belief, grounds of belief must be stated with sufficient particularity. The above cardinal principles enunciated by the Supreme Court have been somewhere lost in actual day-to-day practice. It is seen more as a technical objection some times when a party has to get over inconvenient truths brought out in affidavits but not properly verified. If, in this case, the plaintiff has made his affidavit and stated things within his personal knowledge, but he has stated that the facts were within “his knowledge and belief” in a conjoint fashion in the manner that it is normally done, I would not find there is any requirement to discard belief merely because an objection comes at the time of arguments.

3. The petitioner will support the strength of his case from how the evidence has been elicited and the cross-examination done before the trial Court and not scurrying for cover before this court for rectifying what is wholly inconsequential. The trial Court shall not discard any evidence of the petitioner made in the chief examination through affidavit, unless it is elicited in the cross-examination that any part therein is hearsay.

4. The revision petition is disposed of as above.

(K.KANNAN)
JUDGE

10.03.2015
sanjeev