

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**RA No.229-CII of 2014 in/and
CR No.5136 of 2014 (O&M)
Date of decision: February 06, 2015**

Gurjit Singh and another

...Applicants

Versus

Gupreet Kaur alias Rani and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Rakesh Gupta, Advocate
for the petitioners.

Mr.Amardeep Singh Gill, Advocate
for the applicant-respondents No.1 and 2

INDERJIT SINGH, J.

RA No.229-CII of 2014

Applicants have filed this review application under Section 47 Rule 1 of the CPC for setting aside the order dated 06.08.2014 passed by this Court.

It is mainly stated in the review application along with outer grounds of merit that the impugned order dated 06.08.2014 has been passed without issuing notice to contesting-respondents and same has resulted in miscarriage of justice.

Learned counsel for the non-applicant petitioners admitted that order dated 06.08.2014 was passed without issuing notice to the present applicants.

As the order dated 06.08.2014 has been passed in CR No.5136 of 2014 without giving notice to the contesting respondents No.1 and 2, therefore, in the interest of justice and to give the opportunity of being heard to the contesting-respondents No.1 and 2, the impugned order dated 06.08.2014 passed by this Court is recalled on this technical ground.

CR No.5136 of 2014

Heard.

Notice of motion.

Learned counsel for contesting-respondents No.1 and 2 accepts notice.

Learned counsel for the parties contend that they are ready with the arguments in the main petition and the same be heard today itself.

The present civil revision has been filed by the petitioners under Article 227 of the Constitution of India for setting aside the order dated 14.07.2014 passed by learned Addl. Civil Judge (Senior Division), Samana, whereby he has dismissed the application filed by the petitioners/defendants No.1 and 2 under Order 18 Rule 3(A) CPC for allowing defendant No.2 to record his statement after examining other official witnesses.

Learned counsel for the petitioners argued that the provisions of Order 18 Rule 3(A) CPC are directory in nature. The petitioners want to get examined the summoned witnesses, so that they may produce the documents and petitioners can depose all the

facts in their statements.

Learned counsel for contesting respondents No.1 and 2 argued that when the application before the lower Court has been filed for getting permission to examine the petitioners later on in the case, and first to examine the summoned witnesses, at that time, no list of witnesses to be summoned was annexed by the revision petitioners with the application. The list was given after passing of the order by learned Addl. Civil Judge (Senior Division), Samana.

After hearing learned counsel for the parties and after going through the record, I find that firstly the provisions of Order 18 Rule 3(A) CPC are not mandatory, rather directory in nature and these need not to be strictly applied. The Court, in each and every case, is to see whether the party should be examined first or if due to certain reasons and special circumstances, the party can be allowed to be examined after the examination of the summoned witnesses. In the present case, the petitioners can be examined afterwards as they want to depose regarding the documents on record, which are to be summoned and produced by the official witnesses. Therefore, the provisions under Order 18 Rule 3(A) CPC cannot be applied strictly, which may cause prejudice to the petitioners. If the documents which are to be produced by the summoned witnesses are not produced on record, then, it will be difficult for the petitioners to depose regarding those documents. Otherwise also, no prejudice is going to be caused to the contesting-respondents, if the witnesses, from whom the record has been summoned, are examined first. Of course, the private

witnesses can be asked to be examined after the examination of the petitioners but the official witnesses, who have to depose regarding the record, are to be examined first.

In view of the above discussion, I find merit in the present petition and the same is allowed with direction to the trial Court to first examine the summoned witnesses with record and then to record statements of defendants-petitioners.

February 06, 2015
Vgulati

(INDERJIT SINGH)
JUDGE