

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CR No. 1675 of 2013(O&M)
Date of decision :14.12.2016

M/s Vision Comptech Integrators Ltd. And another

.....Petitioners

Versus

M/s Ansal Properties and Infrastructure Ltd. And others

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Jagdish Manchanda, Advocate
for the petitioners.

Mr. Adarsh Jain, Advocate
for the respondents.

DARSHAN SINGH, J. (Oral)

The present revision petition has been preferred against the order dated 04.02.2013 passed by the learned Civil Judge (Sr. Division) Gurgaon, whereby the application of the respondents-defendants directing the petitioners-plaintiffs to first examine their authorized representative has been allowed.

2. I have heard Mr. Jagdish Manchanda, Advocate, learned counsel for the petitioners, Mr. Adarsh Jain, Advocate, learned counsel for the respondents and have carefully gone through the paper book.

3. Initiating the arguments, learned counsel for the petitioners contended that the learned trial Court has wrongly mentioned that the provisions of order 18 Rule 3A of the Code of Civil Procedure, 1908 (for short CPC) are mandatory in nature. He contended that it has been consistently laid down that the said provisions are directory in nature. He further contended that there is no legal bar for the plaintiff or his

representative to appear in the witness box after the examination of other witnesses. He relied upon cases **Lalit @ Lalit Kumar and another Vs. Kailash and others 2016 SCC Online P&H 7718** and **Jagdish Mehtani Vs. Smt. Usha Rani 2016 SCC OnLine P&H 3716**.

4. On the other hand, learned counsel for the respondents contended that the plaintiff-petitioners have not sought any permission from the Court to examine themselves or their authorized representatives after the examination of the witnesses. So, there is nothing wrong in the direction given by the learned trial Court on the basis of the application moved by the respondents.

5. I have duly considered the aforesaid contentions.

6. Respondents-defendants have moved an application before the learned trial Court giving the direction to the plaintiffs-petitioners to first examine their authorized representative before recording other evidence. The said application was contested on the grounds *inter alia* that the statement of PW-1 Ritu Bhagat was essential and necessary to the suit and the respondents-defendants have not raised any objection since the year 2008 when her statement was recorded. It was further pleaded that the provisions of Order 18 Rule 3A CPC are directory and not mandatory in nature. It was further pleaded that since the evidence of other witnesses on behalf of the plaintiff has already been recorded, hence the defendants cannot be allowed to raise the objections at this stage.

7. Order 18 Rule 3A CPC reads as under:-

“3A. Party to appear before other witnesses – Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reasons to be recorded permits him to appear as his own witness at a later stage.”

8. There is absolutely no dispute with the proposition of law that the provisions of Order 18 Rule 3A CPC being the procedural law are not mandatory in nature. But, at the same time as per the aforesaid provisions of law, where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined unless the Court, for reasons to be recorded permits him to appear as his own witness at a later stage. Thus, as per the aforesaid provisions of law, the petitioners were required to examine their authorised representative before the examination of other witnesses or to seek the permission of the Court to examine him later.

9. This fact is not disputed even by the petitioners that they were not permitted by the learned trial Court to produce their authorized representative at any later stage. Learned counsel for the petitioners also cannot show as to what prejudice has been caused to the petitioners with the direction of the learned trial Court that evidence of authorised representative of the plaintiff should be recorded first and their other witnesses shall be examined after the examination of said authorized representative. This Court in case **Jasvir Singh and another Vs. Jaspal Singh 2015(3) R.C.R (Civil) 1024** has laid down as under :-

“5. Although under Order 18 Rule 3A of the Code requires the parties to be examined first before calling the witnesses, it is simply a practice that is not followed in many of the subordinate courts in Punjab and Haryana. The provision requiring the parties to be examined first was inserted by Act 104 of 1976 for a salutary purpose of bring the assertion of the respective parties first before other witnesses could be brought and to ensure that a party does not cover up every lacuna in evidence of what are brought through witnesses in cross- examination. It is time that discipline at the trial and the statutory provision regarding Rule 3A of the Code is strictly followed. Even if prior permission is not taken before the commencement of trial, it shall be sought at least at the time before the

party is examined. Even this is not being done in our courts. The parties assume that a witness can be examined in any order and the parties can also bring their own versions at any time they wish. Any breach of this rule will be viewed seriously and may result in eschewing the evidence of the parties, if no permission is taken under Order 18 Rule 3A of the Code to examine the party after examination of witnesses. I would issue this directive to apply in all future cases, so that it does not cause any serious dislocation and the parties and more particularly, the Bar which aids and advises the litigants is sensitive to the statutory provision under Order 18 Rule 3A of the Code and the consequences of not complying with the mandate. If, in future, any party does not offer his or her evidence first and brings third party witnesses first and later offers to tender evidence without taking prior permission, the opposite party may oppose such evidence before the party's evidence is tendered. The trial court shall not permit evidence to be given unless, it sets out reason in writing why such permission is being given.

10. The cases relied upon by learned counsel for the petitioners are quite distinguishable on facts. In case **Lalit @ Lalit Kumar and another Vs. Kailash and others (supra)**, the petitioners-plaintiffs have moved an application under Order 18 Rule 3A read with Section 151 CPC for permitting them to be examined after the examination of their three witnesses already recorded. Similarly, in case **Jagdish Mehtani Vs. Smt. Usha Rani (supra)**, the petitioner-defendant has moved an application under Order 18 Rule 3A read with Section 151 CPC that the plaintiff-respondent is debarred from appearing as a witness either personally or through an attorney as she did not seek permission of the Court to examine herself after the examination of other witnesses. In **Lalit @ Lalit Kumar and another Vs. Kailash and others case (supra)**, the application filed by the plaintiff-petitioner was dismissed relying upon the law laid down by this Court in case **Jasvir Singh and another Vs. Jaspal Singh (supra)**. At motion stage this Court directed the trial Court to provisionally record the statement of the plaintiff subject to final decision of revision petition. This

Court taking the view that provisions of order 18 Rule 3A CPC were not mandatory ordered that the statement of plaintiff recorded shall be read in evidence. In case **Jagdish Mehtani Vs. Smt. Usha Rani (supra)**, the application moved by the petitioner-defendant to debar the plaintiff to appear as a witness after the examination of other witnesses was dismissed primarily on the ground that the provisions of Order 18 Rule 3A CPC were not mandatory, rather, were directory in nature and permission can be granted to the plaintiff to appear as a witness even at the later stage. But, in the instant case, it is the admitted position that plaintiffs-petitioners did not seek any such permission of the Court at any stage. So, both those cases were quite distinguishable on facts.

11. In this case, on the basis of an application moved by the respondent-defendant, the learned trial Court has given the direction to the petitioners to first examine their authorized representative before examining the other witnesses. This direction is totally in conformity with the provisions of Order 18 Rule 3A CPC as the petitioners have not sought any permission from the Court to examine its authorized representative after the examination of other witnesses.

12. Consequently, the impugned order does not suffer from any illegality. Therefore, it does not call for any interference by this Court.

13. Thus, the present revision petition having no merits, is hereby dismissed.

(DARSHAN SINGH)
JUDGE

14.12.2016

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No