

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.2970 of 2015 (O&M)
Date of decision:25.07.2016

Sat Pal Dhawan and another

... Petitioners

Vs.

Davinder Singh Aulakh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Amar Vivek, Advocate and
Mr. Anshul Jain, Advocate
for the petitioners.

Mr. S.S.Goripuria, Advocate
for the respondents.

AMIT RAWAL J.

The petitioner-plaintiffs are aggrieved of the impugned order dated 12.03.2015, (Annexure P-3), whereby, an application moved under Order 18 Rule 4 of Code of Civil Procedure (hereinafter referred to as "CPC") for granting permission for examination of plaintiff no.1-Satpal Dhawan through Video Conferencing on the ground that he is stated to be suffering from ill health and unable to appear before the Court being resident of USA, has been dismissed.

Mr. Amar Vivek, learned counsel assisted by Mr. Anshul Jain, Advocate appearing on behalf of the petitioner-plaintiffs submits that mode of examination of accused under Section 313 Cr. P.C.,

through Video Conferencing and appearance of a witness through Video Conferencing has been considered permissible in criminal proceedings by Hon'ble the Supreme Court in **State of Maharashtra vs. Dr. Praful B. Desai, AIR 2003 SC 2053**. By relying upon the aforementioned judgment, two High Courts of this country, namely, Calcutta High Court and Delhi High Court held that evidence of witness in civil case can be recorded through video conferencing by deputing concerned Registrar of the Court as a Coordinator with regard to technical aspects. He further relies upon the ratio decidendi culled out by the Hon'ble Supreme Court in **National Textiles Workers' Union vs. P.R.Ramakrishnan, 1983(1) SCC 228** to contend that law must constantly be on the move adapting itself to the fast changing society and not lag behind and thus, urges this Court for setting aside of the impugned order while allowing the permission as sought in the application.

Mr. S.S.Goripuria, learned counsel appearing on behalf of the respondents submits that plaintiffs have already taken much time in not examining the witness. The application was not supported by any medical certificate with regard to ill health of plaintiff no.1. The video conferencing can be permitted in the criminal case but not in civil matters, for, without exploring the technical aspect and feasibility, recording of the statement cannot be ordered at the drop of the hat. Plaintiff has to be confronted with various documents which is not possible in the aforementioned process and thus, urges this Court for

affirming the findings rendered in the impugned order by dismissing the revision petition.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is merit and force in the submissions of Mr. Amar Vivek.

The identical situation arose before the Delhi High Court in **Milano Impex Private Limited vs. Egle Footwear Pvt. Limited & others 2013 (6) RCR (Civil) 2802**, wherein, after examining the provisions of Order 18 Rule 4 of CPC, the Hon'ble Judge of the Delhi High Court issued the following safeguards which read thus:-

- 1. Before a witness is examined in terms of the Audio-Video Link, witness is to file an affidavit or an undertaking duly verified before a notary or a Judge that the person who is shown as the witness is the same person as who is going to depose on the screen. A copy is to be made available to the other side. (Identification affidavit).*
- 2. The person who examines the witness on the screen is also to file an affidavit/undertaking before examining the witness with a copy to the other side with regard to identification.*
- 3. The witness has to be examined during working hours of Indian Courts. Oath is to be administered through the media.*

4. The witness should not plead any inconvenience on account of time different between India and USA.

5. Before examination of the witness, a set of plaint, written statement and other documents must be sent to the witness so that the witness has acquaintance with the documents and an acknowledgement is to be filed before the Court in this regard.

6. Learned Judge is to record such remarks as is material regarding the demur of the witness while on the screen.

7. Learned Judge must note the objections raised during recording of witness and to decide the same at the time of arguments.

8. After recording the evidence, the same is to be sent to the witness and his signature is to be obtained in the presence of a Notary Public and thereafter it forms part of the record of the suit proceedings.

9. The visual is to be recorded and the record would be at both ends. The witness also is to be alone at the time of visual conference and notary is to certificate to this effect.

10. The learned Judge may also impose such other conditions as are necessary in a given set of facts.

11. The expenses and the arrangements are to be borne by the applicant who wants this facility."

Video conferencing is an advancement in science and technology which permits one to see, hear and talk with someone located at far away places with comfortable ease. In fact, in such a manner, a person is present before a person having conversation on screen. Except for touching one can see, hear and observe as if the party is in the same room. The facility of play back would give an added advantage while cross examining the witness as he can be confronted with documents or other material or statement in the same manner as if he/she was in Court.

It is a matter of record that in every Court, video conferencing facility is available. This case pertains to Chandigarh and video conferencing facility is available at District Court, Chandigarh.

It is also a matter of record that petitioner-plaintiff no.1 is a heart patient with a severely damaged and impaired heart. In such circumstances, it would be very difficult for him to travel to India and suffer the wrath of cross examination in Indian Courts as he is stated to have undergone by-pass surgery in the year 2000 and Angioplasty in the year 2005 and Cardio versions three times thereafter. The health certificates are already on record as Ex.P5.

In view of the aforementioned fact, I am of the view that impugned order is set aside and the following directions are issued for the purpose of recording the statement of plaintiff no.1:-

- i) The evidence of plaintiff No.1 shall be recorded through video conferencing between Chandigarh and USA.
- ii) The video conferencing shall be conducted in District Court at Chandigarh where this facility is available or if such facility is not available, then in the High Court, Chandigarh.
- lii) Mr. Parmod Goyal Registrar (Computers) of this Court is appointed as the Coordinator with regard to the technical aspects of video conferencing in the Indian High Commission in USA.
- iv) The Indian High Commissioner at USA shall nominate a senior officer not below the rank of Deputy Secretary of India to facilitate the video conferencing. The officer nominated by the Indian High Commission shall co-ordinate the video conferencing arrangements in USA and shall remain present at the time of recording of the evidence of plaintiff no.1.
- v) Video conferencing is ordered to be done as per the guidelines of this Court.
- vi) The petitioner is directed to give exact particulars of address in USA for arranging the video conferencing.

viii) The officer nominated by the Indian High Commissioner in terms of the directions given above, shall ensure that apart from his own presence, the only counsel for the plaintiffs is present at the time of video conferencing. He shall ensure that no manner of prompting by word or signs or any other mode is permitted.

viii) The plaintiffs shall bear the costs/expenses of the video conferencing. The expenses for the video conferencing to be undertaken in USA shall be informed to the plaintiff through counsel by the Indian High Commissioner. However, in case of any difficulty, the same may be communicated to the Registrar (Computers) of this Court by e-mail, who shall communicate the same to the plaintiff's lawyer in India.

ix) The officer of the Indian High Commission to be nominated by the Indian High Commissioner shall be paid a lump sum amount of ₹30,000/- per day as honorarium.

x) The plaintiff shall deposit an amount of ₹10,000/- as costs of preparation of the certified copies with the Superintendent of the District Court at Chandigarh for the purpose of preparing the certified copies of the entire record of the case, which shall be sent in separate folders clearly marked as order sheets; pleadings; applications;

plaintiff's forwarded to the office of Indian High Commissioner with the assistance of Ministry of External Affairs.

xi) This record aforementioned shall be made available to the officer nominated by the Indian High Commissioner for the purpose of undertaking the video conferencing as it would be necessary for recording the statement and cross examination of the witness.

xiii) In case, the defendants are desirous of being physically present in USA at the time of recording of the evidence, it shall be open for them to make arrangements at their own costs for appearance but they shall ensure that prior intimation in this regard is filed in the Registry of this Court giving full particulars of the names of the persons as well as enclosing documents of authority in respect of the persons, who shall be representing them in the proceedings. The intimation in this regard as well as documents shall also be furnished to Indian High Commission in USA in any case not later than from 4 weeks from today.

xiv) Video conferencing be recorded and record would be at both hands. The learned Judge located in Chandigarh may record any material remarks regarding the demur of the witness while on screen and also note

the objections raised during recording of the witness which shall be decided at the time of arguments. Learned Judge may also impose any other condition which is necessary and give set of facts. After recording the evidence, the same be sent to the witness and signature be obtained in the presence of the Notary public which shall form part of the suit proceedings.

In these circumstances, the application, aforementioned is allowed and plaintiff no.1 is directed to be examined on the aforementioned conditions.

Accordingly, the revision petition stands allowed.

(AMIT RAWAL)
JUDGE

July 25, 2016
savita