

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 4171 of 2012 (O&M)

Date of Decision: 02.03.2016

Gurmeet Singh and Another

... Petitioner(s)

Versus

Charanjit Kaur and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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

Present: Mr. B.B.S.Sobti, Advocate
for the petitioner(s).

Mr. Namit Gautam, Advocate
for the respondent(s).

Shekher Dhawan, J.

Present petition is challenge to the order dated 20.1.2012, passed by learned Civil Judge (Junior Division), Ludhiana, whereby application, filed by the respondent/plaintiff, under Order 18 Rule 17 CPC read with Section 151 CPC for recalling of PW.1 Sh. S.R.Wadhera, Advocate and for recording his further examination-in-chief was allowed by the Court below.

Relevant facts of the case that plaintiff had filed civil suit for declaration that she is owner in possession of built up residential house as per jamabandi for the year 1995-96 and for quashing of mutation No. 1580 qua the suit property. After completion of pleadings before the Court below, the case was fixed for plaintiff's evidence in January, 2006. Sh. S.K.Wadhera, Advocate was present in the Court and his examination-in-chief was completed in the year 2010 and his cross-examination was deferred on the request of counsel for the plaintiff. Thereafter, application for recalling the witness for recording further examination-in-chief was filed in the year 2011. The main ground for recalling the witness for recording further examination-in-chief was that application for amendment of plaint was allowed.

Learned counsel for the petitioners submitted that application under Order 18 Rule 17A CPC was filed for additional evidence, whereas there was no ground for recalling the witness for further examination-in-chief of Sh. S.R.Wadhera, Advocate as there is no provision for the same. But the power to recall a witness is with the Court only and if the Court considers that witness is required to be recalled for further clarification, only then the witness can be recalled for the same purpose. However, the provisions of Order 18 Rule 17 CPC does not permit the party to re-examine any witness to fill up the lacuna in the case. On this point, reliance was placed upon view taken by co-ordinate Bench of this Court in cases ***Surinder Kaur v. Karanbir Singh 2004(3) PLR 41*** and ***Ranjit Singh v. Naranjan Singh 2010(1) Civil Court Cases 178 (P&H)***.

Learned counsel for the petitioners also submitted that despite the fact that issues were framed in this case in the year 2006 and the case was fixed for plaintiff's evidence but by now plaintiff has not been examined, though mandatory requirement is that plaintiff must be examined before the examination of remaining witnesses. More so, plaintiff also availed more than reasonable adjournments, whereas normally case should not be adjourned more than three times for leading evidence by the parties. On this point, reliance was placed upon the judgment rendered by Hon'ble the Apex Court in ***M/s Shiv Cotex v. Tirgun Auto Plast P. Ltd. & Others 2011(4) RCR (Civil) 807*** and view taken by the co-ordinate Bench of this Court in case ***Jasvir Singh and Another v. Jaspal Singh 2015(3) RCR (Civil) 1024.***

Learned counsel for the respondent submitted that Sh. S.R.Wadhera, Advocate was examined as he was to prove the compromise dated 19.11.1994 effected in earlier litigation and copy of plaint, drafted by him at the instance of Sumittar Singh and Harbhajan Singh. The said fact was not in the knowledge of the applicant and the application was filed when this fact came to the knowledge of the plaintiff. The Court below has rightly decided the controversy by passing the impugned order on 20.1.2012 and present petition is liable to be dismissed.

Having considered the submissions made by learned counsel for the parties and the fact that most of the facts are not

disputed that civil suit was filed in the year 2002. Thereafter, plaintiff availed several adjournments and by now even she has not been examined, though she should have been examined before the examination of remaining witnesses. The Court below has not even considered that normally a party is not entitled to seek more than three adjournments as per the view taken by the Hon'ble Apex Court in ***M/s Shiv Cotex's case*** (*supra*) and also by the co-ordinate Bench of this Court in ***Jasvir Singh's case*** (*supra*).

As regard to plea taken by the applicant for recalling of Sh. S.R.Wadhera, Advocate for the purpose of his further examination-in-chief, there is no such provision under the law for calling the witness again and again for the same purpose. Undisputedly, the powers lie with the Court under Order 18 Rule 17 CPC to call any witness at any stage or recall any witness, if the Court considers that some clarification is required from the witness. But a party is not well within his rights to seek recalling of the witness for the same purpose. On this point, this view of mine found support from the view taken by the co-ordinate Benches of this Court in ***Surinder Kaur's case***(*supra*) and ***Ranjit Singh's case***(*supra*).

Another aspect of the case that the Court below has allowed the application on the ground that amendment to that extent has been allowed to be made on an application under Order 6 Rule 17 CPC. The said order was challenged before this Court and it has already been set aside while deciding Civil Revision No. 2021 of 2012 titled "Gurmeet Singh and Others v. Charanjit Kaur" on 27.1.2016.

In view of above, present petition is accepted; order dated 20.1.2012, passed by the Court below, is legally not sustainable and the same stands set aside.

(Shekher Dhawan)
Judge

March 2, 2016

"DK"