

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

**CR No.4966 of 2015 (O&M)  
Decided on: 02.03.2016**

Lalit @ Lalit Kumar and another

....Petitioners

Versus

Kailash and others

....Respondents

**CORAM: HON'BLE MRS JUSTICE REKHA MITTAL**

**Present:** Mr. Rahul Vats, Advocate  
for the petitioners.

Mr. Varun Gupta, Advocate  
for respondent No.1.

**REKHA MITTAL J. (Oral)**

The present petition lays challenge to order dated 18.05.2015 passed by the Civil Judge (Junior Division), Narnaul, dismissing an application filed by the petitioners/plaintiffs under Order 18 Rule 3A read with Section 151 CPC for permitting the plaintiffs to be examined after examination of three witnesses.

The petitioners have filed a suit for permanent injunction against respondents/defendants restraining them from interfering in joint enjoyment, joint possession, user and occupation of the suit property by the plaintiffs, detailed in headnote of the plaint. Further relief has been sought by way of mandatory injunction that if the defendants are successful to change nature of the suit property by raising any construction

during pendency of the suit, the same be restored to its original position and in alternative prayer for possession has been made. After framing of issues, the petitioners examined Raja Ram PW-1, Arjun Lal Sharma, Advocate PW-2, Nand Kishore, Draftsman PW-3 and thereafter, the plaintiffs wanted to examine themselves being a party to the suit but the same was objected to by the contesting party. The petitioners filed an application seeking permission of the Court for examination of the plaintiffs and the same was dismissed by the learned trial Court by placing reliance upon the judgment of this Court "***Jasvir Singh and another vs Jaspal Singh***" passed in **CR No.3595 of 2014** along with another connected civil revision, decided on 30.03.2015.

Counsel for the petitioners would contend that the plaintiff(s) has been examined and cross-examined in pursuance of order dated 06.08.2015 passed by this Court at the time of notice of motion. It is further contended that when the petitioners/plaintiffs started their evidence having 'right to begin' envisaged under Order 18 Rule 1 CPC, the respondents did not raise any objection in regard to examination of witnesses prior to examination of plaintiff(s) in compliance with the provisions of Rule 3 of Order 18 CPC. It has been argued that this Court in ***Jasvir Singh and another's case (supra)*** has taken cognizance of a practice being followed without impugnity by way of an assumption that a witness can be examined in any order and the parties can bring

their own versions at any time they wish. Taking a serious view of the matter in regard to non-compliance of the provisions of Rule 3A CPC, the Court has held that the directives to be issued in the judgment shall apply in all future cases so that it does not cause any serious dislocation and the parties and more particularly the bar is sensitive to the statutory provision under Order 18 Rule 3A CPC and consequence of non-complying with the mandate. No doubt, the judgment was passed by this Court on 30.03.2015 but there is no material available on record that this judgment was circulated to the members of judiciary and bar at a point of time prior to 07.05.2015, the day the petitioners started their evidence and examined Raja Ram PW-1 and Arjun Lal Sharma, Advocate PW-2. It further appears that as the judgment was not to the knowledge of counsel for the respondents, he did not raise any objection in regard to examination of witnesses prior to examination of the plaintiff(s).

The order of notice of motion dated 06.08.2015 reads as follows:-

*“Learned counsel for the petitioners submits that in exercise of powers under Order 18 Rule 3-A CPC, the trial Court has declined an opportunity to the plaintiffs to appear as their own witnesses after having examined three other witnesses.*

*Learned counsel for the petitioners has relied upon Harnam Singh Vs. Sobha Singh, 1991*

*(1), R.R.R. 246, in support of his contentions that in such circumstances at the most the plaintiffs can be burdened with costs.*

*He also places reliance on Gurmail Chand Vs. Ashok Verma, 2004(3) R.C.R. (Civil) 164 to contend that the objection should be raised by the opposite party at the time the other witnesses are examined prior to the examination of the plaintiffs.*

*Prima facie, it appears that provisions of Order 18 Rule 3-A CPC are directory and not mandatory. The plaintiffs cannot be denied an opportunity to examine themselves for the reason that they did not appear prior to the other witnesses.*

*Notice of motion for 17.11.2015.*

*Meanwhile, the trial Court shall permit the plaintiffs-petitioners to provisionally appear as witness and will permit the witnesses to be cross-examined by the defendants subject to the final decision of the present revision petition.”*

Indisputably, the plaintiff(s) has already been examined in pursuance of the interim directions issued by this Court. Keeping in view that the provisions of Rule 3A are not mandatory but directory in nature as has been held by a Full Bench of this Court in “**Amritsar Improvement Trust vs Ishri Devi**”, 1979 PLR 354 that was not noticed by the learned Single Judge in **Jasvir Singh and another's case (supra)** coupled with that evidence of the party (plaintiff) has already been recorded when examined in

the light of discussion made hereinbefore, I am of the considered opinion that it would be expedient in the interest of justice that evidence of the plaintiff(s) as his own witness is read into evidence. As a result, the petition stands disposed of in the aforesaid terms.

**(REKHA MITTAL)**  
**JUDGE**

**02.03.2016**

*yakub*