

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 5976 of 2015

Date of Decision: 17.05.2016

Jagdish Kumar and Others

... Petitioner(s)

Versus

M/s Countrywide Promoters Private Limited

... 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. Johan Kumar, Advocate
for the petitioner(s).

Mr. Adarsh Jain, Advocate
for the respondent(s).

Shekher Dhawan, J.

Petition petition under Article 227 of the Constitution of India for setting aside order dated 11.8.2015, passed by learned Civil Judge (Senior Division), Faridabad, whereby application, filed by the plaintiff under Section 151 CPC for allowing Mr. D.P.Khatana, Advocate to put his signatures on affidavit Ex.PW.1/A or to place his new affidavit, was allowed.

Learned counsel for the petitioners, while assailing the said

order, took the plea that witness Mr. D.P.Khatana, Advocate was examined as PW.1 and he had tendered into evidence his affidavit Ex.PW.1/A. He was cross-examined by the defendants and thereafter, an application was filed by the plaintiff on 15.1.2015 seeking permission to allow Mr. D.P.Khatana, Advocate to put his signatures on affidavit Ex.PW.1/A. The said application cannot be allowed because the same amounts to tampering of record and just to fill up the lacuna of the case, which is legally not permissible.

Learned counsel for the respondent submitted that the Court below has already decided the application because the witness was examined and the contents of affidavit were well within the knowledge of the petitioner when the cross-examination of Mr. D.P.Khatana, Advocate (PW.1) was started. There was no reason for the deponent not to put his signatures on the affidavit (Ex.PW.1/A) and just because of inadvertence, the said affidavit remained unsigned. Though the deposition by way of examination-in-chief was admitted to be correct by the witness during his cross-examination. The Court below rightly accepted the contention of the respondent and application under Section 151 CPC.

Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that in such like proceedings during trial, the Court is certainly vested with powers under Section 151 CPC to correct any error and in fact the said section is meant for that purpose. More so, perusal of Order 18 Rule 4 CPC shows that now the examination-in-chief of a witness is to be recorded

by way of affidavit and copy thereof is to be supplied to the opposite party. For ready reference, Order 18 Rule 4 CPC, which was incorporated vide amendment dated 1.7.2002, reads as follow:

"4. Recording of evidence.-(1) *In every case, the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence:*

Provided that where documents are filed and the parties rely upon the documents, the proof and admissibility of such documents which are filed along with affidavit shall be subject to the orders of the Court.

(2) The evidence (cross-examination and reexamination) of the witness in attendance, whose evidence (examination-in-chief) by affidavit has been furnished to the Court shall be taken either by the Court or by the Commissioner appointed by it:

Provided that the Court may, while appointing a commission under this sub-rule, consider taking into account such relevant factors as it thinks fit."

Prior to the incorporation of Rule 4 to Order 18 CPC, evidence of the witness in attendance was required to be taken orally in the open Court in the presence and under the personal direction and superintendence of the Judge. More so, the Court is duly vested with powers under Order 18 Rule 17 CPC to recall any witness who was examined earlier. That way, if there was any mistake on the part of

witness by not putting the signatures on the affidavit, the Court can certainly ask such a person to do the needful and that has been done by the Court below in the present case, while exercising powers under Section 151 CPC. More so, as per perusal of Order 18 Rule 4 CPC, the affidavit so supplied to the counsel for the petitioner and such an objection should have been pointed out to the Court in the beginning but that has not been done. Thereafter, cross-examination was conducted and the only remedy available with the Court is to accept the application to rectify the mistake. Similar matter was before this Court in case ***Raj Wati v. Brahmanand 2014(2) PLR 225***, whereby in similar controversy regarding correction of affidavit of defendant as a witness, view was taken that clerical or typographical errors can always be allowed to be corrected. Inherent power under Section 151 CPC can always be used for this purpose for the ends of justice and to prevent miscarriage of justice because the said power has been vested *inter alia* for such matters.

In view of above, the Court below has rightly accepted the application under Section 151 CPC. Resultantly, present petition is without any merit and the same stands dismissed.

(Shekher Dhawan)
Judge

May 17, 2016

"DK"