

Civil Revision No. 6040 of 2016

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In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 6040 of 2016

Date of Decision:16.9.2016

Mohinder Singh

---Petitioner

vs.

Yadwinder Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Jatinder Singla, Advocate
for the petitioner

Rekha Mittal, J.

The present petition has been directed against order dated 10.8.2016 passed by the Additional Civil Judge (Senior Division), Sangrur whereby application (Annexure P-1) filed by the petitioner/defendant under Order 18 Rule 3-A of the Code of Civil Procedure (in short “CPC”)

has been dismissed.

The respondent/plaintiff has filed a suit for recovery of Rs. 20 lakhs alongwith interest on the basis of agreement to sell dated 6.4.2012 with the additional reliefs of permanent and mandatory injunction. On completion of pleadings of the parties, issues were framed on 11.12.2014. The respondent/plaintiff examined three witnesses namely Ashwani Kumar, Steno in the office of SDM, Sangrur PW1, Neeraj Goyal, Stamp Vendor PW2 and Parveen Kumar, Advocate, Notary Public, Sangrur PW3. The petitioner filed the instant application that as the respondent/plaintiff has already examined three witnesses, he cannot examine himself in view of order 18 Rule 3-A CPC. After filing of reply and having heard counsel for the parties, application filed by the petitioner was dismissed.

Counsel for the petitioner has a serious grievance to express with regard to the observations recorded by the trial court that the witnesses already examined are not material witnesses and the judgment passed by this Court *Jasvir Singh and another vs. Jaspal Singh Volume 179 (2013-3)PLR 130* is distinguishable. It is vehemently argued that Order 18 Rule 3-A CPC does not make any distinction if the witnesses already examined by

a party are material or otherwise, therefore, nature of evidence of the witnesses already examined is of no consequence to negate provisions of Order 18 Rule 3-A CPC. According to counsel, as the trial court did not advert to the facts and ratio of *Jasvir Singh and another's case (supra)*, there was no occasion for the trial court to say that the law cited by counsel for the applicant is distinguishable.

I have heard counsel for the petitioner, perused the paper book particularly the order impugned.

Before adverting to the submissions made by counsel for the petitioner, it is appropriate to recapitulate the provisions of Rule 3-A of Order 18 CPC, reads as follows:-

“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.”

Perusal of the aforesaid extract would make it evident that a party who intends to appear as a witness is required to appear in the witness box before any other witness on his behalf is examined unless the court for

the reasons recorded, permits him to appear as his own witness at a later stage.

In *Jasvir Singh and another's case (supra)* decided by this Court, it was held, quoted below:-

“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. In Gurmail Chand Vs. Ashok Verma 2004 (3) RCR (Civil) 164, this court had held that if witnesses other than party was

examined and party is examined later, no objection could be taken. In my respectful view, it will amount to putting the cart before the horse. Objections could be rightfully taken only when the party shows up to tender evidence and not when third party witness is given.”

However, judgment of this Court ***Mahabir Jain Kanya Pathshala Trust Bhiwani and another vs. Daya Krishan and others, 2010 (3) CCC, 385***, escaped notice of the Court wherein it has been held by relying upon judgment of a Full Bench of this Court in ***The Amritsar Improvement Trust vs. Ishri Devi 1979 PLR 354*** that the provisions of Order 18 Rule 3-A CPC are directory and the party can seek permission of the Court even at a stage subsequent to examination of some of his witnesses to appear as his own witness at a later stage. In view of enunciation of law laid down in ***Mahabir Jain Kanya Pathshala Trust Bhiwani and another's case (supra)***, I find myself unable to be persuaded with the submissions made by counsel for the petitioner that the respondent/plaintiff cannot be permitted to examine himself as he has already examined few witnesses.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine.

Before parting with this order, it is pertinent to note that counsel for the petitioner has rightly pointed out that the trial court without adverting to the judgment in *Jasbir Singh and another's case (supra)* has commented adversely that the law cited by counsel for the petitioner/applicant is distinguishable, without assigning any reason. The trial court should not have adopted an attitude of escapism and was required to deal with the judgment and then draw distinction. The trial court is directed to follow proper course in future.

(Rekha Mittal)
Judge

16.9.2016
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No