

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

**Civil Revision No.6654 of 2015
Date of decision : 04.02.2016**

Darshan Singh

.....Petitioner

Versus

State Bank of India

...Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

Present: Mr. Satbir Rathore, Advocate for petitioner.

Ms. Madhu Dayal, Advocate for respondent.

DARSHAN SINGH, J.

The present revision petition has been preferred against the order dated 26.08.2015 passed by learned Additional Civil Judge (Senior Division), Mukerian, vide which the application under Order 18 Rule 3A of the Code of Civil Procedure, 1908 (hereinafter called the 'CPC') filed by the plaintiff-respondent has been allowed.

2. The respondent State Bank of India has filed a suit for recovery of Rs.6,60,612.09 inclusive of interest calculated upto 31.03.2013 with future interest by sale of mortgaged property against the

petitioner-defendant Darshan Singh. During the pendency of the suit, plaintiff-respondent Bank moved the application under Order 18 Rule 3A CPC for directing the defendant to appear as his witness. The said application has been allowed by the learned trial court vide impugned order. Hence, this revision petition.

3. I have heard Mr. Satbir Rathore, Advocate, learned counsel for the petitioner, Ms. Madhu Dayal, Advocate, learned counsel for the respondent and gone through the paper-book carefully.

4. Initiating the arguments, learned counsel for the petitioner contended that the petitioner has summoned the record which was required for deposition by the defendant. In the absence of the record, he is unable to depose. He further contended that the provisions of Order 18 Rule 3A CPC are not mandatory and are only directory in nature. The petitioner had already deposited diet money for summoning his witnesses and those witnesses have already been summoned by the Court. Thus, he contended that the impugned order is illegal.

5. On the other hand, learned counsel for the respondent contended that it is mandatory that the petitioner being defendant, should first appear in the witness box and, thereafter, to examine his witnesses. She contended that there is no illegality in the impugned order which is perfectly in consonance with the provision of Order 18 Rule 3A CPC. Thus, she contended that the present revision has only been filed by the petitioner just to prolong the case.

6. I have duly considered the aforesaid contentions.

7. The provisions of Order 18 Rule 3A CPC reads as under:

“3A . 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.”

8. As per the aforesaid provision of law, 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 the reasons to be recorded permits him to appear as his own witness at a later stage. From the aforesaid rule it is clear that the petitioner being defendant was required to appear in the witness box before any other witness is examined by him as it is not the case of the petitioner that he has been permitted by the Court to appear at any later stage. Learned counsel for the petitioner has also not been able to show as to what prejudice will be caused to him if he appears first in the witness box before examining any other witness. Learned trial court has rightly relied upon the case ***Jasvir Singh and another Vs. Jaspal Singh 2015(3) Civil Court Cases 495*** wherein it has been laid down as under:-

“5. 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."

9. Thus, I do not find any illegality in the impugned order.

10. Consequently, the present revision petition having no merits is hereby dismissed.

04.02.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**