

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.2412 of 2013(O&M)
Date of Order: 25.07.2017

Ranbir

..Petitioner

Versus

Satish Chander and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Anmol Partap Singh Mann, Advocate,
for the petitioner.

Mr. Arun Luthra, Advocate,
for respondent no.1.

ANIL KSHETARPAL, J.

Defendant has filed the revision petition against order passed by learned Additional Civil Judge (Sr. Division), Gohana, debarring plaintiff no.2 to appear as witness on behalf of the defendant.

Two plaintiffs, namely, Satish Chander and Prem Lata had filed a suit for declaration against the petitioner-defendant-Ranbir Singh. Plaintiff no.2 was arrayed through power of attorney i.e. plaintiff no.1. Plaintiff no.1 had appeared in the witness box as PW1 and thereafter plaintiff closed his evidence.

Defendant in its evidence, summoned plaintiff no.2 as witness. Plaintiff no.2 appeared and tendered her evidence by way of an affidavit, which was exhibited as Ex.DW2/A.

Learned counsel for the plaintiffs moved two applications and sought deferment of cross-examination.

By way of impugned order, the Court has decided the

application filed by plaintiff no.1 and has ordered that since no special reasons have been assigned for calling one of the plaintiff as a witness, therefore, one party cannot be permitted to summon the opposite party in a suit unless such good reasons are assigned justifying summoning of the witnesses.

Defendant has filed the present revision petition challenging the aforesaid order.

Counsel for the defendant-petitioner has submitted that plaintiff no.2 had appeared in the witness box, tendered her affidavit in examination-in-chief. Plaintiff No.2 had not objected on being summoned as a witness on behalf of the defendant. She did not raise any objections even while appearing in the witness box. She was ready to depose as witness on behalf of the defendant. Therefore, learned counsel for the petitioner has contended that either under the provisions of the Code of Civil Procedure or under the Evidence Act, there is no bar in summoning a party as a witness of opposite side.

On the other hand, learned counsel for respondent No.1 has submitted that in fact statement on behalf of plaintiff no.2 has already been given when plaintiff no.1 appeared and stated that he is having power of attorney of plaintiff no.2. Plaintiff no.1 has already been cross-examined. Learned counsel therefore submits that a witness who has appeared on behalf of the plaintiff cannot be permitted to appear on behalf of defendant. Learned counsel for the respondent has further submitted that one of the party to the suit cannot be permitted to summon the other party in normal circumstances. If a party wants to summon other party as his own witness, then party has to assign special reasons and seek permission of the Court.

Counsel for the respondent has further submitted that re-calling of a witness, once examined and discharged, cannot be permitted unless provisions of Order 18 Rule 17 of the Code of Civil Procedure have been complied.

I have considered the submissions made by the counsel for the parties.

This case has peculiar facts. Plaintiff no.1 acting upon a general power of attorney of plaintiff no.2 had filed a suit. Plaintiff no.1 had appeared in the witness box as plaintiff. Of course, he did mention that he is also power of attorney holder of plaintiff no.2.

Defendant filed an application for summoning plaintiff no.2 as his witness. Plaintiff no.2 appeared in the witness box and filed affidavit in examination-in-chief. It was specifically stated by plaintiff no.2 that she has not given any power of attorney to plaintiff no.1. She was ready to face cross-examination. However, counsel for plaintiff no.1 moved an application, which has been allowed by the Court.

The defendant has filed the revision petition.

Learned counsel for the defendant has submitted that the plaintiff No.2 has already been summoned as witness. The plaintiff No.2 has appeared in the witness-box and tendered her evidence in examination-in-chief. He has further submitted that the plaintiff No.1 has no locus to oppose the appearance of plaintiff No.2 as witness on behalf of the defendant.

On the other hand, counsel for the plaintiffs has submitted that the defendant cannot be permitted to summon the plaintiff as own witness. Learned counsel has relied upon judgment reported as *2006(2) RCR (Civil) 206*, in support of his contention.

I have examined the issue in detail. Rule 12 of Part H, Chapter 1, Volume 1 of Punjab and Haryana High Court Rules and Orders (Practice and Procedure) prescribes as under:-

“12. Examination of parties as witnesses:- The vicious practice of each party summoning his opponent as a witness merely with the design that counsel for each party gets a chance of cross-examining his client, obtains in many of the Muffasil Court. This practice has been strongly condemned by their Lordships of the Privy Council and must cease (See I.L.R. XXXI, 116 All at page 112). On the other hand, when the parties are personally acquainted with any facts which they have to prove, they are expected to go into the witness-box and stand the test of cross-examination by the opposite party. Failure of a party to go into the witness-box in such circumstances may, in the absence of a satisfactory explanation, justify the Court in drawing an inference which is unfavourable to the party. Attention may here be drawn to two explanations added in Punjab to Order XVIII, Rule 2, of Code of Civil Procedure, 1908. In view of these amendments a civil court in Punjab can of its own accord or on the application of any party, for reasons to be recorded, direct any party to examine any witness at any stage. The expression “witness” here includes a party as his own witness.”

It has been provided that there is a vicious practice to summon the opponent as a witness merely with a design that counsel for each party gets a chance to cross-examine its client. However, Rule 12 does not debar the summoning of the opposite party as a witness absolutely. Patna High Court in the judgment reported as *AIR 1993, Patna 122* held that the provisions of Code of Civil Procedure do not bar the summoning of opposite party as a witness.

Learned counsel for the respondent(s) has relied upon the judgment passed by this Court reported as *2006(2) RCR (Civil) 206* to contend that in normal circumstances, opposite party cannot be summoned as a witness. In that case, the tenant had filed an application and deposited the expenses for summoning the landlady in the witness-box. On appearance, landlady filed an application for discharge. In these circumstances, the Rent Controller recalled the order of summoning the landlady at the behest of tenant.

In the present case, the suit was filed by two plaintiffs. The plaintiff No.2 had filed the suit through plaintiff No.1. The defendant summoned the plaintiff No.2 as witness. She appeared and gave affidavit in evidence as examination-in-chief. At this stage, plaintiff No.1 filed an application objecting to the examination of plaintiff No.2. The plaintiff No.2 never refused to appear as witness on behalf of the defendant.

In my opinion, the plaintiff No.1 had no locus to dispute the appearance of plaintiff No.2 as a witness on behalf of defendant, once plaintiff No.2 did not have any objection.

There may be cases where one party may seek summoning of the other party as its own witness. However, if the other party so summoned as witness refuses to appear or objects to the summoning, the Court cannot force the opposite party to appear as a witness for opposite party.

However, as noticed, this is not the situation here. The plaintiff No.2 has already appeared and tendered her affidavit in evidence in lieu of examination-in-chief. In these circumstances, the order passed by the Court is erroneous and hence set aside.

The revision petition is allowed.

The plaintiff No.2 would be permitted to appear in the witness-box on behalf of the defendant. Counsel for the plaintiff No.1 would be at liberty to cross-examine the witness.

July 25, 2017

Naresh/Pawan

(ANIL KSHETARPAL)
JUDGE

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