

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.2164 of 2017
DECIDED ON: March 24, 2017

TARA WATI AND ANOTHER

....PETITIONERS...

VERSUS

RAJVIR

....RESPONDENT...

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Lokesh Sharma, Advocate
for the petitioners.

JASPAL SINGH, J.

Challenge in this revision petition is to the order dated 14.03.2017 (Annexure P-1) passed by Civil Judge (Junior Division), Rohtak whereby an application filed by the petitioners under Order 18 Rule 3-A of the Code of Civil Procedure (for short, "CPC") for not permitting the plaintiff to depose his evidence, has been dismissed.

2. The contention of learned counsel for the petitioners is that the impugned order dated 14.03.2017 whereby an application moved under Order XVIII Rule 3-A CPC has been declined, is absolutely against the settled canons of law. Mis-appreciation of legal proposition applicable to the facts and circumstances of the case in hand has resulted into miscarriage of justice. Order XVIII Rule 3-A clearly stipulates that the plaintiff shall have to appear/lead his evidence prior to the examination of other witnesses or tendering all the documents by the plaintiff. In view of the said provisions, the plaintiff is not

entitled to tender affidavit in his own evidence when all the PWs have already been examined by him. The impugned order is a clear cut violation of the provisions contained in Order XVIII Rule 3-A CPC. As such, the impugned order is not sustainable in the eyes of law and is liable to be set aside. Secondly, an application moved by the petitioners-defendants deserves to be allowed.

3. After bestowing due consideration to the submissions made by learned counsel for the petitioners-defendants and scrutinizing the impugned order dated 14.03.2017, this Court is of the considered view that various submissions made by learned counsel for the petitioners-defendants are without any legal and factual weight.

4. For the proper appreciation of the matter in controversy, it would be appropriate to reproduce Order XVIII Rule 3-A CPC which reads as under:-

“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.”

5. A glance at the aforesaid provision transpires that though its first part makes it mandatory that where a party himself wishes to appear as a witness, he shall so appear before the examination on any other witness on his behalf yet the second part gives a discretion to the Court concerned to grant permission to the plaintiff to appear as his own witness at a later stage, though for the reasons to be recorded.

6. Adverting to the facts and circumstances of the instant case, plaintiff-respondent has already examined as many as 6 witnesses and at the examination of those witnesses, no objection was raised by any of the

petitioners/defendants and an application under Order XVIII Rule 3-A CPC was moved only when the respondent-plaintiff intended to tender his own evidence by way of affidavit. Prior to the examination of other witnesses, no objection was raised before the trial court and they were duly cross-examined. Moreover, this Court is of the considered view that examination of respondent-plaintiff is essential for the proper and effective adjudication of the matter in controversy between the parties and to set all the matters involved. Moreover, a party cannot be made to suffer, especially, in the circumstances that no objection was raised at the time of examination of other witnesses prior to the examination of the respondent-plaintiff by the petitioners-defendants.

7. Thus, this Court is of the considered view that there is no illegality, infirmity or perversity in the impugned order dated 14.03.2017. The same is otherwise held to be legal and valid having been passed absolutely inconsonance with the settled proposition of law.

8. As a nutshell of the aforesaid discussion, this Court does not find any merit in the instant petition. As such, it stands dismissed.

9. No order as to costs.

March 24, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned: Yes

Whether reportable: Yes/No