

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

CR No.377 of 2017.

Date of Decision: 20.01.2017.

Anoop Singh and another

....Petitioners.

VERSUS

Sarabjit Singh and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Sarabjit Singh, Advocate for the petitioner.

SNEH PRASHAR, J.

The petitioners are aggrieved by the order dated 02.11.2016 passed by learned Civil Judge (Junior Division), Amritsar by virtue of which the application of the respondents-plaintiffs filed under Order XVIII Rule 3-A of the Civil Procedure Code (for short, "CPC") seeking permission to appear in the witness box at a later stage was allowed.

In a suit for permanent injunction filed by the respondents-plaintiffs, which is being contested by the petitioners-defendants, learned trial Court framed issues on the rival pleadings of the parties and called upon the respondents-plaintiffs to adduce their evidence. Perusal of the impugned order reveals that during their evidence the respondents-plaintiffs summoned some official witnesses alongwith the record and examined them. Thereafter, when they themselves intended to step into the witness box, the petitioners raised objection that they could not be allowed to appear

as they had not obtained permission of the Court for being examined at a later stage as per provisions of Order XVIII Rule 3-A CPC and they filed an application to the said effect.

Filing reply to the application of the petitioners-defendants, the respondents-plaintiffs also filed required application seeking permission of the Court to examine themselves in evidence. While the application of the respondents-plaintiffs was allowed, the application filed by the petitioners-defendants was dismissed and aggrieved by the same they have filed the instant petition.

The submissions made by Mr. Sarabjit Singh, learned counsel for the petitioners have been considered.

Learned counsel for the petitioners argued that the provisions of Order XVIII Rule 3-A CPC are mandatory in nature. The respondents-plaintiffs should have examined themselves at the first place i.e. before examining their witnesses. In case they were to appear at a later stage, they should have moved an application before the trial Court before starting their evidence, who by recording reasons could have allowed them to be examined at a later stage. The application filed by the respondents-plaintiffs at the later stage, was nothing but a counter blast to the application-objection raised by the petitioners against their examination and was wrongly allowed by learned trial Court.

There appears no force in the arguments of learned counsel for the petitioners. Procedural laws are hand maid of justice and are not its mistress. They are meant to advance its call and not to obstruct the same. In

State of Punjab v. Shamlal Murari, AIR 1976 Supreme Court 1177 it was

tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the hand maid and not the mistress, a lubricant, not a resistant in the administration of justice. Where the non-compliance, the 'procedural, will thwart fair' hearing of prejudice doing of parties, the rule is mandatory. But, grammar apart, if the breach can be corrected without injury to a just disposal of the case, we should not enthrone a regulatory requirement into a dominant desideratum. After all, courts are to do justice, not to wreck this end product on technicalities”.

Order XVIII Rule 3-A 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.”

Indeed, the above provision postulates that where a party himself wishes to appear as a witness, he shall so appear before examining any other witness on his behalf, but at the same time it also provides that the Court for the reasons to be recorded can permit the party to appear as his own witness at a later stage.

In ***The Amritsar Improvement Trust vs. Ishri Devi, 1979 PLR 354***, Full Bench of this Court interpreting Order XVIII Rule 3-A CPC held that the provisions of Order XVIII Rule 3-A are not mandatory and are directory in nature and laid down as under:-

“The matter is capable of being viewed from another angle as well. Apart from the issue of the rule being mandatory or directory, it is clear that the command laid therein regarding

the party appearing before his other witnesses has been itself provided with an exception where permission to do otherwise can be accorded by the court for adequate reasons. When the provision itself provides both the mandate and an exception thereto, the one cannot be divested from the other. The significant thing to highlight here is that the true question at issue is not with regard to the ordinary rule that party shall appear before any witness on his behalf appears, but pertains to the stage at which such permission to appear at a later stage is to be secured. Whilst the ordinary rule with the exception thereto may normally be adhered to there appears to be nothing inflexible in rule 3-A with regard to the stage of securing the permission as such. I would, therefore, hold that such permission may also be sought at a later stage and if the court finds merit in the same it would not be debarred from acceding to such a prayer. Equally it deserves to be recalled that the Legislature has itself prescribed a certain safeguard by laying down the requirement or the recording of reasons for doing so.”

As a normal rule in case the opposite party has an objection to the examination of the witnesses before the other party steps into the witness box, it should raise an objection there and then. In the instant case, the petitioners-defendants allowed the respondents-plaintiffs to examine the witnesses first without raising objection to examination of the respondents-plaintiffs first as envisaged under Order XVIII Rule 3-A CPC. From their

the witnesses before the respondents-plaintiffs themselves would appear as their own witness.

Having said the above, the fact remains that the mandate of the legislature is not to be ordinarily disregarded or lightly deviated from. As a normal rule the testimony of the party should be recorded first and it is to prevent deviation from the normal rule that the Court is required to record reasons for doing so. In any case, it has been laid down in **The Amritsar Improvement Trust's** case (supra) that the provisions of Order XVIII Rule 3-A CPC are not mandatory but are directory in nature. The party, who proceeds to examine the witnesses first, can seek permission of the Court even subsequent to examination of his witnesses to appear as his own witness at a later stage. It may be added that no party to the litigation can be left to suffer on technical grounds. Examination of the respondents-plaintiffs as their own witness was important and necessary for proper presentation of their case. The respondents-plaintiffs filed application seeking permission of the Court to examine themselves at a later stage i.e. after they had examined their witnesses and the application for the reasons recorded by learned trial Court was allowed.

Finding no illegality or perversity in the order of learned trial Court and there being no merit in the petition, it is hereby dismissed.

(SNEH PRASHAR)
JUDGE

20.01.2017.
jitender sharma

Whether speaking/ reasoned : **Yes/ No**

Whether Reportable : **Yes/ No**