

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

CR-5394-2015 (O&M)
Date of decision: 02.11.2017

RAMPYARI

...Petitioner

Versus

SUMAN AND ORS

...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. J.P. Sharma, Advocate for the petitioner.

Mr. P.R. Yadav, Advocate for respondent No.1.

REKHA MITTAL, J. (Oral)

The present petition directs challenge against order dated 10.07.2015 (Annexure P-1) passed by Civil Judge (Jr. Div.), Narnaul whereby the petitioner/defendant has not been permitted to examine herself as a witness as she had already examined few witnesses on her behalf.

Counsel for the petitioner has submitted that the trial Court did not permit examination of the petitioner by relying upon judgment of this Court **Jasvir Singh and another Vs. Jaspal Singh, 2015(3) PLR 130**. It is further submitted that at the time of adducing her evidence, the respondent/plaintiff examined four witnesses prior to her examination as a witness. It is further argued that a serious prejudice is likely to be caused to the petitioner in case she is not permitted to examine herself on technical consideration as the provisions of Order 18 Rule 3-A are not mandatory but

directory in nature. In support of his contention, he has referred to Full Bench judgment of this Court **The Amritsar Improvement Trust Vs. Ishri Devi, 1979 PLJ 234**. Further reference has been made to judgment of a Single Bench **Mahabir Jain Kanya Pathshala Trust, Bhiwani Vs. Daya Krishan, 2010(3) PLR 140**.

Counsel representing the respondent (contesting respondent), on the contrary, would urge that even if the petitioner wanted to examine herself as a witness subsequent to examination of other witnesses on her behalf, she was required to seek prior permission of the Court for tendering herself in the witness box in the light of ratio laid down in Jasvir Singh's case (supra). Further argued that as the petitioner did not file an application seeking such permission, the trial Court has rightly denied permission for her examination by relying upon judgment in Jasvir Singh's case (supra).

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

Undoubtedly, this Court in Jasvir Singh's case (supra) has issued certain directions while interpreting Order 18 Rule 3-A of the Code of Civil Procedure (in short 'the CPC') to be followed strictly after passing of the said judgment in March 2015. As a matter of fact, there was need of sensitizing members of the bar as well as judicial officers with regard to requirements of Order 18 Rule 3-A CPC so that the long drawn practice followed by the courts examining the witnesses before examining the party could be done away for necessary compliance with the procedure

prescribed under Order 18 Rule 3-A of the Code. This Court is not oblivious of the fact that a litigant may not be aware of the procedure prescribed in law even though ignorance of law is no excuse. Counsel for the respondent has not disputed that the respondent/plaintiff examined her witnesses before she tendered herself in the witness box and she also did not seek permission of the Court for her examination subsequent to examination of the witnesses.

The Full Bench of this Court in the referred authority has held that the provisions of Order 18 Rule 3-A CPC are not mandatory but directory in nature. A relevant extract from Paras 11 and 12 therefrom reads as follows:-

“11. 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.

12. Before parting with this judgment, however, a note of caution must be sounded. Holding that the aforesaid rule is directory and the permission may be granted at a later stage, is not to say that the mandate of the legislature in this context is to be easily disregarded or lightly deviated from. It is plain that as a normal rule the legislature requires the testimony of the party to be recorded first and the rationale there is not far to seek. Apparently in order to prevent an easy deviation from the rule, it has been laid down that the court shall record its reasons for doing so. It is to be hoped that the trial Courts in whom primarily the discretion has been vested, would keep both the letter and the spirit of the rule in mind before according permission thereunder in exceptional circumstances, and not whittle the same down by allowing too easy and indiscriminate deviation therefrom.”

The concluding observations in Para 11 makes it evident that permission to appear as a witness by the party after examination of the witnesses may 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. Keeping in

view the interest of substantial justice, it would be in the fitness of things that the order impugned is set aside with liberty to the petitioner to file an appropriate application seeking permission to appear as a witness subsequent to examination of witnesses.

For the foregoing reasons, the petition is allowed and the impugned order is set aside with liberty to the petitioner to file an appropriate application before the trial Court, within a period of one month from today, seeking necessary permission. In case such an application is filed by the petitioner, the same shall be decided by the trial Court after providing opportunity of hearing to the parties in accordance with law but without being influenced by the order impugned.

No order as to costs.

02.11.2017

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No