

In the High Court of Punjab and Haryana at Chandigarh

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CR No.5129 of 2014

Date of decision: 10.11.2017

MANINDER KAUR

.....petitioner

Versus

BARING UNION CHRISTIAN COLLEGE BATALA AND ANR

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.G.S.Sirphikhi, Advocate,
for the petitioner.

Mr.Prateek Gupta, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J (oral)

Petitioner has assailed the order dated 8.7.2014 passed by the Civil Judge (Jr.Divn.) Batala, vide which application filed by the plaintiff-petitioner for re-examination of PW-3 Amanat Masih was dismissed.

Plaintiff filed a suit for recovery of ₹ 5,27,000/- in forma pauperis under Order 33 Rule 1 read with Order 7 Rule 1 CPC. Examination-in-chief of PW-3 Amanat Masih was conducted on 22.11.2013, wherein the witness had deposed that he had not brought the record of B.A. Ist year pertaining to the

year 2003-2004 and he can bring and produce the same on the next date. Further examination-in-chief of the witness was deferred to 17.1.2014. On the adjourned date, the witness brought the record of B.A. Ist year pertaining to the year 2003-04. The cross-examination of the witness was deferred to 20.1.2014. On 20.1.2014, the cross-examination of the witness was done by learned counsel for the defendants in the absence of learned counsel for the plaintiff. In the cross-examination, undertaking, which was allegedly given by father of the plaintiff, was exhibited as Ex.D-1. The grouse of the plaintiff-petitioner is that the said document was exhibited in his absence that too in the statement of plaintiff witness during cross-examination. Plaintiff-petitioner filed an application for re-examination of the witness PW-3 Amanat Masih on 7.2.2014 and the said application has been dismissed vide the impugned order by observing that the wrong exhibition of the document can be taken into consideration by the Court at the relevant time.

Learned counsel for the petitioner contends that re-examination of the witness in terms of Section 138 of the Evidence Act gives a statutory right to the plaintiff to call the witness for re-examination after his cross-examination by the opposite side. At this stage, by moving the application, the plaintiff is not supposed to disclose or spell out the particular questions on which the witness would be subjected to. Learned

counsel relies upon **State of West Bengal vs. Arunesh Pathak**
2000 (1) RCR (Civil) 508.

The procedural law is handmaid of justice. Since the cross-examination of PW-3 was done in the absence of learned counsel for the plaintiff and the document Ex.D-1 was exhibited by the defendants in the cross-examination of PW-3, therefore, I deem it appropriate to allow the application for re-examination of the witness in terms of Section 138 of the Evidence Act.

Accordingly, this revision petition is allowed. Impugned order dated 8.7.2014 is hereby set aside. Normal consequences to follow.

(RAJ MOHAN SINGH)
JUDGE

November 10, 2017

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Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No