

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.5402 of 2016 (O&M)
Date of Order: 06.12.2017

Surjit Singh

..Petitioner

Versus

Gurdev Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

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

Mr. Jagtar Singh Sidhu, Advocate,
for respondent no.1.

ANIL KSHETARPAL, J (Oral)

Defendant no.4-petitioner is in revision petition against order, refusing permission to counsel for the petitioner to cross-examine DW2 and DW3, after they have waived opportunity at the initial stage.

Plaintiff had filed a suit for permanent injunction against as many as 7 defendants. All the 7 defendants contested the suit filed by the plaintiff. Defendants no.1 and 3 appeared in evidence as DW2 and DW3, respectively. They submitted affidavits in lieu of examination-in-chief in consonance with the stand taken by them in the written statement. However, it is alleged that subsequently in the cross-examination by the counsel for the plaintiff, these defendants made certain admissions/statements, which was not to the liking of defendant no.4.

At that stage, counsel for defendant no.4 sought permission for cross-examination of Defendants no.1 and 3. Learned trial Court had declined the prayer.

Learned counsel for the petitioner has referred to provisions of Sections 137 and 138 of the Indian Evidence Act, 1872, to contend that after the cross-examination was over, counsel for defendant no.4 could be permitted to put questions to defendants no. 1 and 3 under re-examination.

For facility of reference, Sections 137 and 138 of the Indian Evidence Act, 1872 are extracted as under:-

137. Examination-in-chief.—*The examination of witness by the party who calls him shall be called his examination-in-chief.*

Cross-examination.—*The examination of a witness by the adverse party shall be called his cross-examination.*

Re-examination.—*The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.*

138. Order of examinations.—*Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.*

The examination and cross-examination must relate to relevant facts but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

Direction of re-examination.—*The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.*

A reading of the aforesaid provisions would show that the re-examination is permissible only to a party who has called that witness. The re-examination is restricted only to explanation of the matters referred to in the cross-examination and normally no new matter is permitted to be introduced in the re-examination except with the permission of the Court. Defendants no.1 and 3 were not witnesses called over by defendant no.4.

Therefore, counsel for defendant no.4 could not be permitted to re-examination of defendants no.1 and 3.

Learned counsel for the petitioner has further referred to the judgment passed by this Court reported as *Sadhu Singh v. Sant Narain Singh and others, 1979 PLR 24*. In this case, one of the defendant Sadhu Singh had taken a different stand than the remaining defendants in the pleadings. It was in these circumstances that the Court permitted cross-examination.

Learned counsel for the petitioner has further referred to the judgment passed by this Court reported as *Karatr Singh v. Thakur Singh, 2002(3) RCR (civil), 17*.

The facts of the aforesaid judgment are also entirely different. Normally, one of the defendant cannot be permitted to cross-examine, the witness produced by a co-defendant unless the Court finds that the aforesaid defendant had in the pleadings supported the case of the plaintiff and, therefore, he had part taken the character of plaintiff. This is not the case here.

In view of these facts, this Court does not find any good ground to interfere with the impugned order passed by the trial Court.

The revision petition is dismissed.

December 06, 2017
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(ANIL KSHETARPAL)
JUDGE

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