

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

-.-

Civil Revision 6092 of 2017
Date of decision: 11.09.2017

Harinderpal Singh through his LR Jaswinder Kaur Petitioner

Versus

Harleen Kaur and others

.....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Raman Mohinder Sharma, Advocate
for the petitioner

-.-

Rekha Mittal, J. (Oral)

The present petition directs challenge against orders dated 23.08.2017 and 29.08.2017 whereby evidence of the petitioner/defendant has been closed by order of the Court and application filed for recalling order dated 23.08.2017 has been dismissed.

Counsel for the petitioner has submitted that Harleen Kaur, respondent/plaintiff availed of number of opportunities for concluding her evidence and the case remained pending from 13.08.2014 till 12.05.2017 for evidence of the respondent/plaintiff. It is further submitted that 24.05.2017 was the first date fixed for evidence of the petitioner and by 24.07.2017, the petitioner had already examined three witnesses namely Jaswinder Kaur (DW1), Prem Singh (DW2) and Surinder Singh (DW3). It is further argued that the petitioner wanted to examine handwriting expert to rebut evidence of handwriting expert examined by the respondent/plaintiff but the said expert could not be contacted in time as daughter of the petitioner, one of

the defendants in the case had to go to Canada for studies on 19.08.2017. It is prayed that the petitioner may be allowed one opportunity to examine the handwriting expert and a witness from Punjab National Bank, Sheranwala Gate Branch, Patiala along with records subject to payment of reasonable compensation for delay, if any, attributable to the petitioner. Counsel would urge that the petitioner would ensure presence of both the witnesses before the Court if one effective opportunity is granted for the purpose.

I have heard counsel for the petitioner and perused the paper book particularly various zimini orders, reproduced in the grounds of revision and produced during course of hearing, obtained from the web site of the concerned Sessions Division.

Perusal of the zimini orders substantiates plea of the petitioner that the first opportunity for adducing evidence to the petitioner was granted on 24.05.2017 and eventually evidence was closed by order on 23.08.2017. Without wastage of time, the petitioner filed an application for recalling order dated 23.08.2017 and the same was dismissed on 29.08.2017. In the order dated 29.08.2017, in the concluding lines, the Court has recorded as follows:-

Arguments partly heard on behalf of plaintiff. To come up on 30.08.2017 for arguments on behalf of defendant.

Counsel for the petitioner has produced zimini order dated 08.09.2017 which speaks contrary to what has been observed in order dated 29.08.2017. The order dated 08.09.2017 reads as follows:-

No rebuttal evidence of the plaintiff is present. On the request of counsel for the plaintiff case is adjourned to 13.09.2017 for rebuttal evidence if any or for arguments.

It is surprising that the trial Court while dismissing the application for recalling order dated 23.08.2017 had recorded an order with regard to hearing of arguments of the plaintiff and adjournment of the case for 30.08.2017 for arguments on behalf of the defendant but in the later order, the case is shown to be fixed for rebuttal evidence. It appears that the concluding observations in order dated 29.08.2017 were made by the Court in order to justify its order dismissing the application for recalling order dated 23.08.2017. Such a practice on the part of a Judicial Officer is highly improper.

Taking into consideration the given facts and circumstances of the case coupled with the principles of natural justice, the petitioner is provided with one opportunity to examine the handwriting expert as well as a witness from the Bank, subject, however, to the following conditions:-

- i) The petitioner shall be entitled to one effective opportunity to examine the aforesaid witnesses;
- ii) The petitioner shall ensure that a copy of the report prepared by the handwriting expert is supplied to counsel for the respondent/plaintiff well in advance to enable him to cross examine the expert on the date fixed for his examination-in-chief;
- iii) The petitioner shall prepare a demand draft of Rs.10,000.00 in favour of the respondent/plaintiff which shall be handed over to the respondent/plaintiff on the date to be fixed by the trial Court for evidence of the petitioner; and
- iv) Failure of the petitioner to comply with any of the conditions, would entail dismissal of the petition.

Before parting with the order, it is clarified that the instant petition has been disposed of without notice to the respondent in order to avoid inconvenience and incurring expenditure by her. However, if she has

any grievance to express, she shall be at liberty to file an appropriate application before this Court.

(Rekha Mittal)
Judge

September 11, 2017
mohan bimbra

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