

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

C.R. No.1014 of 2018 (O&M)

Date of Decision: February 15, 2018

Jagroop Singh

...Petitioner

Versus

Mohinder Kaur and another

..Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Daman Jeet Bhoriwal, Advocate
for the petitioner.

FATEH DEEP SINGH, J.

The petitioner-Jagroop Singh, who also happens to be plaintiff aggrieved over order dated 08.01.2018 (Annexure P/5) passed by the Court of learned Civil Judge, Junior Division, Bathinda in a suit preferred by plaintiff for mandatory injunction seeking direction to defendant No.1/Union Bank of India to make payment of amount detailed in the head note lying deposited in the Bank account by way of FDR in the name of plaintiff-Jagroop Singh and defendant No.2 Mohinder Kaur, whereby, the Court has by impugned order allowed further cross-examination of the plaintiff witness.

On hearing learned counsel for the petitioner and perusing the records of the case, the petitioner/Jagroop Singh and respondent/Mohinder Kaur as is there are husband and wife, senior citizens and are fighting over amount lying in the Bank account which the husband claims that he is entitled for sum of Rs.2553/- in the joint account of the plaintiff as well as defendant No.2 with defendant No.1/Bank.

The main grouse of the petitioner is that initially

defendant No.1/Bank had put in appearance and filed written statement but defendant No.2 failed to file the same and vide orders dated 24.7.2015 the defence of defendant No.2 was struck off and this Court vide order dated 8.11.2017 set aside the same. Thereafter, defendant No.2 appeared and filed written statement and after taking written statement on record the Court has granted opportunity to defendant No.2/now respondent No.1 to cross-examine the plaintiff's witnesses.

The contentions of the learned counsel for the petitioner that the trial Court has closed the evidence on 18.11.2016 and, thereafter, afforded an opportunity vide order dated 08.01.2018 Annexure P/5 was totally against law. It is the own stand of the petitioner that the defence of the wife was struck off on account of non-filing of written statement and which order was set aside by this Court allowing the wife to file written statement, who had filed the same in consequence of that order. Section 134 of the Evidence Act clearly states that there can be no particular numbers of witnesses that are required to establish the case of the parties and it is by virtue of Section 136 of this Act, a Judge is supposed to decide the admissibility of the evidence and in the present case the Court below has found it essential that after defendant-wife had put in appearance and filed written statement in spite of the fact that earlier she had cross-examined the plaintiff-witnesses needs to put her defence so taken in the written statement to the witnesses and thought it to be relevant and had allowed the evidence to be so recorded. Section 137 of the Evidence Act provides for re-examination and since by filing of written statement new matter has been introduced by the permission of the Court wherein certain specific defences

has been taken by the defendant-wife certainly gives an opportunity to the party for just decision to put questions relevant to his written statement. Chapter X of the Evidence Act pertains to examination of witnesses and lays down the procedure which has to be followed for examination of the witnesses by a Court of law and, thus, cross-examination of the defendant-wife may be relevant fact which is admissible in law and the learned counsel for the petitioner could not convince this Court how prejudice has been caused necessitating intervention of this Court. Thus, by the impugned order the Court below keeping in view the scenario in the matter has rightly held that there is necessity for further cross-examination of the plaintiff-witnesses as the party filing the written statement needs to be given an opportunity to put his defence to the witnesses of the plaintiff. The impugned order certainly does not suffers from any illegality or perversity rather is a step forward in the dispensation of justice. The present petition being hopelessly without any merits stands dismissed in limine with cost of Rs.5000/-.

(FATEH DEEP SINGH)
JUDGE

February 15, 2018

aarti

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