

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

**Civil Revision No.2147 of 2018
Date of Decision: 28.09.2018**

Vivek Sharma

.....Petitioner

Vs

Vani Sharma

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Kulwant Singh Advocate
for the petitioner.

None for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged the order dated 29.04.2017 passed by the Addl. District Judge, Amritsar, whereby application under Order 6 Rule 2 CPC and Order 18 Rule 4 CPC moved by the respondent was allowed and para nos.2, 7 to 10 mentioned in the affidavit of the petitioner for examination-in-chief were rejected and struck off on the ground that the said paragraphs were beyond the pleadings of the plaint of the petitioner in the pleadings of petition under Section 13 of the Hindu Marriage Act.

[2]. Brief facts of the case are that the petitioner filed a

petition under Section 13 of the Hindu Marriage Act for grant of divorce on the ground of cruelty before the Addl. District Judge, Amritsar.

[3]. The issue of consideration before this Court is whether the pleadings made in the affidavit/examination-in-chief of the petitioner can be struck off with the aid of Order 6 Rule 2 CPC and Order 18 Rule 4 CPC. Order 6 Rule 2 CPC pertains to the pleadings of the parties, whereas Order 18 Rule 4 CPC deals with recording of evidence. There is no provision for striking off examination-in-chief.

[4]. While issuing notice of motion on 04.04.2018, following order was passed by the Co-ordinate Bench of this Court:-

“Learned counsel for the petitioner contends that para Nos.2 and 7 to 10 of his affidavit tendered in examination-in-chief have been rejected being beyond pleadings on the application under Order VI, Rule 2 and under Order XVIII, Rule 4 CPC, 1908.

It is contended that the Order VI, Rule 2 CPC pertains to the pleadings and Order XVIII, Rule 4 CPC is regarding recording of evidence. Both of the Rules do not provide for striking out the paragraphs in the affidavit, being beyond pleadings.

It is also contended that the facts pleaded in the said case are by way of explanatory and to support the main plea of cruelty taken in the main petition.

Notice of motion for 30.05.2018.

In the meanwhile, the trial Court shall adjourn the case beyond the date fixed by this Court.”

[5]. Respondent was represented by the Advocate on 30.05.2018. Today, none appeared on behalf of the respondent, despite two pass overs. This Court proceeded to consider the controversy with the assistance of learned counsel for the petitioner.

[6]. Learned counsel for the petitioner submitted that provisions of Order 6 Rule 2 CPC and Order 18 Rule 4 CPC did not create any embargo in incorporating pleadings in the affidavit for tendering the same in examination-in-chief by the petitioner. Such pleadings cannot be curtailed at this stage of litigation as the affidavit tendered by the petitioner would be subject to cross-examination by the respondent. If the evidence is found to be beyond pleadings, the same can be eschewed by the Court at the relevant stage.

[7]. I have considered the submissions made by learned counsel for the petitioner.

[8]. Order 6 Rule 2 CPC applies to the pleadings only and the same cannot be extended to the stage of evidence in the form of evidence for leading examination-in-chief. Similarly Order 18 Rule 4 CPC does not apply to the facts of this case. The pleadings made by the petitioner in para nos.2 and 7 to 10

in the petition under Section 13 of the Hindu Marriage Act would be tested by the Court with reference to the affidavit in the form of examination-in-chief. On being cross-examined by the respondent, the trial Court would be at liberty to take final call on merits.

[9]. The trial Court would be at liberty to appreciate the relevancy, admissibility and genuineness of the evidence on legal parameters, if the same is found to be in consonance with the pleadings, the same can be relied. If the evidence led by the petitioner is found to be beyond pleadings, the same can be eschewed by the Court.

[10]. The Hon'ble Apex Court in case of **Bipin Shantilal Panchal vs State of Gujarat 2001(1) criminal RCR 859**, has castigated the practice of holding up trial on objections taken at the time of tendering of documents in evidence and held such a practice to be archaic practice. Though, the aforesaid view was expressed in a criminal case but the same was followed in civil cases also.

[11]. Leading of evidence at this stage would not crystallize any substantial right in favour of the petitioner. The execution of document with the endorsement of objection by the respondent would be tested at the threshold of admissibility, validity and genuineness of the documents in terms of its execution and its

nature can be considered at a later stage. Even though, there is no provision in law for de-exhibiting documents already exhibited in evidence but if the execution of an document is objected to then the same has to be answered in terms of its admissibility at a later stage and in the event of failure to prove its execution, the evidence can be eschewed by the Court.

[12]. For the reasons recorded hereinabove, the impugned order dated 29.04.2017 passed by the Addl. District Judge, Amritsar is set aside. However, the trial Court would be at liberty to decide the relevancy, authenticity and genuineness of the plea taken in the examination-in-chief at the appropriate stage. If the evidence is found to be in consonance with the pleadings, the same can be relied, however if the evidence is found to be not in consonance with the pleadings, the same can be eschewed in accordance with law.

[13]. With the aforesaid directions, this revision petition is disposed of.

September 28, 2018

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No