

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

CR No.6637 of 2017 (O&M)

Date of decision : February 17, 2018

Bimla Rani and others

..... Petitioners

Versus

Jaspal Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Sourabh Goel, Advocate for the petitioners.

Mr. Sumeet Mahajan, Sr. Advocate with
Ms. Ramneeq Kaur, Advocate for respondent No.1.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

Impugned in the present revision petition filed under Article 227 of the Constitution of India, is the order dated 06.09.2017 (Annexure P-6) passed by learned Civil Judge (Jr. Divn.), Ludhiana, vide which application filed by the defendant-petitioner under Order XVIII, Rule 3A, 1908 CPC for rejecting the affidavit of the plaintiff Jaspal Singh, PW9 tendered on 27.01.2017 was rejected.

I have heard learned counsel for the parties and have also carefully gone through the case file.

Suffice to say that the plaintiff had filed a suit for declaration regarding the ownership of the house situated at Gurdev Nagar, Ludhiana. He has also challenged the Will dated 07.12.1986, allegedly propounded by

one Churu Singh. He has also challenged the decree dated 11.02.1994 passed by the civil Courts and has sought some declaration regarding a large number of sale deed in addition to other relief.

It comes out that the plaintiff examined eight witnesses and thereafter, on 27.01.2017, he tendered his affidavit in examination-in-chief. At that time, no objection was raised by the defendant that said plaintiff could not lead his evidence after the examination of other witnesses and the case was deferred for cross-examination of the defendant. On the next date of hearing, present application was filed. In the meanwhile, the plaintiff also filed an application Annexure P-1 for permission to examine himself after the examination of other witnesses.

Learned counsel for the petitioner has referred to the provisions of Order XVIII, Rule 3A CPC, which are reproduced as under:

“3-A. Party to appear before other witnesses.- Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reasons to be recorded, permits him to appear as his own witness at a later stage.”

It is contended that the plaintiff should have appeared as a first witness and without permission of the Court, he cannot appear at a later stage.

Learned counsel for the petitioner has relied upon the authority of Full Bench of this Court delivered in case of ***“The Amritsar Improvement Trust vs Ishri Devi”***, 1979(2) RCJ 422, wherein it is held that the provisions of Order XVIII, Rule 3 A CPC, 1908 being procedural are directory in nature.

Reference has been made to para Nos.8, 9 and 12, which are reproduced as under:

8. An examination of the matter on principle is however no inevitable, and since the controversy must revolve around the language of the statute, it is necessary to read Rule 3A:-

“3A Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the court, for reasons to be recorded, permits him to appear as his own witness at a later stage.

*In construing the provision aforesaid it must necessarily be kept in the forefront that in essence it lays down a rule of procedure. Equally, imperative it is to recall the repeated dictum that procedure is in the ultimate the handmaid of justice and not its mistress and is meant to advance its cause and not to obstruct the same. A procedural rule, therefore, has to be liberally construed and care must be taken that so strict an interpretation be not placed thereon whereby technicality may tend to triumph over justice. It has to be kept in mind that an overly strict construction of rule of 3-A may result in the stifling of the material evidence of a party even if for adequate reasons, which may be beyond his control, the party concerned had failed to secure the permission, to step into the witness-box later, at the time of commencement of his evidence. That to my mind cannot be easily ascribed as the intent of the legislature in enacting the provision. It is worthwhile to recall the picturesque observations of Krishna Iyer, J. speaking for the court in **State of Punjab v Shamlal Murari**, AIR 1976 Supreme court 1177, that we must always remember that procedural law is not to be a*

tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the hand maid and not the mistress, a lubricant, not a resistant in the administration of justice. Where the non-compliance, the 'procedural' will thwart fair' hearing of prejudice doing of parties, the rule is mandatory. But, grammar apart, if the breach can be corrected without injury to a just disposal of the case, we should not enthrone a regulatory requirement into a dominant desideretum. After all, courts are to do justice, not to wreck this end product on technicalities."

9. *Keeping the aforesaid canon of construction with regard to procedural laws in mind we may now go back to the language of Rule 3-A. A bare reference thereto would make it manifest that the Legislature has undoubtedly laid down the rule that a party appearing as his own witness must so appear before any other witness on his behalf has been examined. However, in equally express terms one exception to the said rule has also been provided by the Legislature itself. This is that with the permission of the court a party for sufficient cause may be allowed to appear even at a stage subsequent to the examination of one or all of his witnesses. It, therefore, deserves highlighting that the rule requiring a party to step into the witness-box first is not an inflexible one and can be relaxed with the permission of the court. What however is significant to note herein is that the language of the statute does not in any way prescribe the precise time at which the permission to appear later is to be secured. It does not say that this must necessarily be in the very first instance before any witness has been examined on his behalf. One may, therefore, say that the statute is silent as to the stage at which the*

permission is to be secured. Nor can it be said that by necessary intendment the legislature has laid down that the said permission must be sought at the very inception of the evidence and not later. Indeed, when broadly construed, the intention of the Legislature appears to be that the normal and the ordinary rule prescribed now is that party appearing as his own witness should do so before any one of his witness. However, the rule is not an inflexible or a sacrosanct one and may be expressly deviated from with the permission of the court based on adequate reasons. No specific stage being prescribed or fixed by the statute for securing such permission, a party may perhaps as a matter of abundant caution apply at the stage of commencing his evidence and get the necessary permission and equally, if a sufficient ground is made out, he may secure the same at a later stage.

12. Before parting with this judgment, however, a note of caution must be sounded. Holding that the aforesaid rule is directory and the permission may be granted at a later stage, is not to say that the mandate of the legislature in this context is to be easily disregarded or lightly deviated from. It is plain that as a normal rule the legislature requires the testimony of the party to be recorded first and the rationale there is not far to seek. Apparently in order to prevent an easy deviation from the rule, it has been laid down that the court shall record its reasons for doing so. It is to be hoped that the trial Courts in whom primarily the discretion has been vested, would keep both the letter and the spirit of the rule in mind before according permission thereunder in exceptional circumstances, and not whittle the same down by allowing too easy and indiscriminate deviation therefrom.”

Reference has also been made to the judgment of this Court dated 30.03.2015, titled as *“Jasvir Singh and another vs Jaspal Singh”* passed in CR No.3595 of 2014.

I am of the view that the present revision is frivolous and aimed at wasting of time of the trial Court as well as this Court. It is also held by the Full Bench that the provisions of Order XVIII, Rule 3A CPC, 1908 are procedural in nature and cannot be enforced strictly. It is for the trial Court to see that the proper procedure is followed or not. If there is substantial compliance of the provisions, that will be sufficient.

In the present case, eight witnesses are examined, when plaintiff tendered his affidavit in examination-in-chief along with several documents on 27.01.2017. No objection was raised by the defendant that he could not be allowed to tender his affidavit in examination-in-chief. In this way, examination-in-chief of the plaintiff has already taken to have been recorded. The case was deferred on the request of the defendant only for cross-examination. It was on the next date of hearing when the present application was filed. In the meanwhile, the plaintiff also filed an application for permission to examine himself after the examination of other witnesses. The provisions of Order XVIII, Rule 3-A CPC, 1908 makes it clear that there is no requirement of filing application in writing. The permission to appear as his own witness at later stage, can be granted orally or by implication. When the plaintiff tendered his affidavit in examination-in-chief and the court allowed him to do so and no objection was raised by the opposite party, such permission is deemed to have been impliedly granted. In such case, on the next date of hearing, no objection could be

raised, which should have been raised at the appropriate stage. Therefore, in my view, the application filed by the plaintiff for permission to examine himself after the examination of other witnesses is rendered infructuous.

It being so, it is held that the trial court had impliedly granted the permission to the plaintiff to examine himself when it allowed his examination-in-chief to be recorded by way of affidavit. The present petition is found to be frivolous and appears to be a pleasure litigation.

As such, the present revision petition is dismissed.

(KULDIP SINGH)
JUDGE

February 17, 2018

sarita

Whether speaking / reasoned Yes

Whether Reportable: No