

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.6784 of 2017

Date of Decision: 09.02.2018

Baljinder Pal Puri

... Petitioner

Versus

Vijay Kumar & anr.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. S.K. Singla, Advocate,
for the petitioner.

RAMENDRA JAIN, J.(Oral)

Through the instant revision petition filed under Article 227 of the Constitution of India, challenge has been laid to the order dated 10.08.2017 (Annexure P-4) of the trial Court allowing the application dated 02.08.2017(Annexure P-2) of respondent No.1-plaintiff, for discharging and exempting him from appearance as a witness of the petitioner-defendant.

In nutshell, respondent No.1-plaintiff filed a suit for a decree for possession by way of specific performance of agreement to sell dated 20.08.2008, claiming alternative relief of permanent injunction and recovery of ₹35.00 lacs paid by him to the petitioner-defendant as earnest money.

During trial, the plaintiff appeared through his general power of attorney PW-2 Rajiv Aggarwal and he was cross-examined by the petitioner-defendant at length. However, when the turn of the petitioner-defendant came for his evidence, he sought summoning of respondent No.1-plaintiff as his own witness to which respondent No.1-plaintiff laid challenge by way of an application for discharging and exempting him from evidence.

The said application was contested by the petitioner-defendant.

After hearing both the sides, the trial Court accepted the said

application of respondent No.1-plaintiff and discharged/exempted him from appearing as witness of the petitioner-defendant.

Learned counsel for the petitioner-defendant contends that the general attorney of respondent No.1-plaintiff did not specifically reply to the questions put to him in cross-examination by the petitioner-defendant. Therefore, cross-examination of respondent No.1-plaintiff was very much necessary for just and effective adjudication of the case. The trial Court has erred in not appreciating the fact that the original transaction between the parties could only be proved by examination of respondent No.1-plaintiff and therefore, his statement was necessary to decide the case in an effective manner. In support of his arguments, learned counsel has placed reliance on Pushpaben Champaklal Shah and anr. Vs. Rikhavdev Tirthram Sharma and ors., 2006 AIR (Gujarat) 66.

Having given thoughtful consideration to the submissions made by learned counsel for the petitioner, this Court finds that the instant revision petition is completely devoid of any merit for the reasons to follow:-

1. Respondent No.1-plaintiff cannot be compelled by the petitioner-defendant to appear in the witness-box as his witness.
2. The petitioner-defendant in support of his assertions/defence, has to lead evidence independently. In other words, he has to stand on his own legs to prove his stand.
3. General attorney of respondent No.1-plaintiff has already been cross-examined by the petitioner-defendant at length.
4. The facts and circumstances of *Pushpaben Champaklal Shah's case(supra)* relied upon by the learned counsel for the petitioner, are distinguishable from the facts and circumstances

of the present case inasmuch as in that case, general attorney had denied the signatures of the plaintiff on some crucial documents and further there was a specific observation of the Court that general attorney was introduced and examined to avoid personal appearance by the party in Court. In these circumstances, it was held that a party can summon its opponent. However, a rider was imposed that such practice should not be adopted as a matter of course.

In view of the above, this revision petition is dismissed.

09.02.2018
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No