

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

CR No.9148 of 2017
Date of decision : 23.01.2018

Meenakshi Gupta

...Petitioner

Versus

Surinder Gupta and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Dr. Payal Mehta, Advocate for the petitioner.

Mr. Santosh Sharma, Advocate for the respondents.

ANIL KSHETARPAL, J.

Meenakshi Gupta, wife of Arun Gupta-plaintiff, the petitioner was summoned as a witness by the defendants to appear on their behalf. She is objecting thereto.

Arun Gupta, the plaintiff had filed a suit for mandatory injunction against Surinder Gupta and Arushi Gupta. The defendants had filed an application for summoning Meenakshi Gupta wife of Arun Gupta, the plaintiff, to appear in the witness-box on their behalf. She came present on 03.11.2017, the plaintiff objected to recording her oral testimony in the Court and pressed that her testimony be recorded by way of tendering her affidavit. The aforesaid application was dismissed by the trial Court vide order dated 03.11.2017. The Court held that she is a summoned witness and as per the judgment of this Court in *2015(2) RCR (Rent) 483, Anil Chopra Vs. Ajay Kapoor*, it was found that it is the discretion of the Court to record the statement in the Court or permit the party to file an affidavit in

examination-in-chief. However, the Court looking into the facts of the case, ordered that the statement of Meenakshi Gupta shall be recorded in the Court.

Thereafter, Meenakshi Gupta engaged a counsel and got filed an application under Section 151 CPC read with the provisions of Section 122 of the Indian Evidence Act as well as Order 18 Rule 3-A and 4 of CPC seeking discharge of the petitioner.

The aforesaid application was also dismissed by the learned trial Court vide order dated 06.11.2017.

I have heard the learned counsel for the parties at length and with their able assistance gone through the documents filed. It is not in dispute that the defendants had summoned the petitioner-Meenakshi Gupta to appear on their behalf. The parties who had summoned the witness is to get the statement of the witness recorded. In the present case, witness is the wife of opposite party. Therefore, the apprehension of the defendants is that if she is permitted to file an affidavit in lieu of the examination-in-chief, she may not make a statement what the defendants want her to make. Defendants would have no right to cross-examine their witness. It is the defendants who have to ask questions to their witness according to the case setup by them. Of course, it is the discretion of the witness to answer in the manner it likes. But summoned witness of a particular party cannot claim that it would file an affidavit according to its own wishes in lieu of examination-in-chief. Initially, when the petitioner-Meenakshi Gupta appeared, she did not object to recording of her statement. It was the plaintiff who had objected thereto. The Court rejected the request of the

plaintiff.

In the second application, the petitioner witness apart from seeking permission to file an affidavit in chief, prayed for her discharge. The Court after considering the various aspects of the matter, dismissed the application.

Once the petitioner witness had permitted to be summoned, the witness cannot refused to depose and seek discharge from the witness-box. Now she is refusing to appear as a witness. In the considered opinion of this Court in a Civil Suit, witness cannot refused to give evidence.

Next contention of the petitioner is that as per the provisions of Section 122 of the Indian Evidence Act, 1872, no person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married.

The learned trial Court has noticed this provision and has held that as and when any question in this regard is put, the witness-Meenakshi Gupta would be entitled to object thereto.

In view of the discussions made above, this Court does not find any good ground to interfere with the orders passed by the trial Court.

Revision petition is dismissed.

23.01.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No