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

CR No. 422 of 2019 (O&M)
Date of Decision: 16.08.2019

Varinder Pal Singh

-Petitioner

Vs

Harinder Singh Sidhoo & others

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Namit Gautam, Advocate
for the petitioner.

Mr. Gulzar Mohammad, Advocate
for the respondents.

RAJ MOHAN SINGH, J. (ORAL)

1. The petitioner has laid challenge to the order dated 19.12.2018 passed by the Additional Civil Judge (Senior Division), Ludhiana, whereby the application filed by the petitioner for eschewing the affidavit of plaintiff himself as PW-3 was dismissed.
2. Perusal of the record would show that initially the petitioner was represented by Special Power of Attorney namely Sandeep Singh, who after tendering his affidavit in examination-in-chief as PW1 did not appear for his cross-examination, rather he was given up by the plaintiff himself. Another attorney namely Tara

Singh was appointed by the plaintiff, who had also tendered his affidavit in examination-in-chief. Tara Singh was partly cross examined by the defendants. At that stage, an application was filed by the plaintiff himself through his attorney Tara Singh, seeking permission to record his evidence through video conferencing. The said application was allowed by the trial Court vide the impugned order.

3. During the course of arguments before this Court, it appears that the grievance of the petitioner is only to the extent of preserving the testimony of PW2 i.e. Tara Singh (attorney of the plaintiff) who had already been partly cross examined.

4. Learned counsel for the respondents has no objection to the aforesaid with a rider that the plaintiff himself be allowed to appear through video conferencing and testimony of the attorney already recorded be preserved on record with a liberty to the defendants to cross examine the plaintiff on the basis of his affidavit.

5. I find that the contention raised by the learned counsel for the respondents is not baseless. Under Order 18 Rule 3A CPC, it is true that if a party does not offer his or her evidence first and brings third party witness ahead of him or her, without leave of the Court, then opposite party can oppose such evidence. Leave of the Court is *sine quo non* for such indulgence. The provision in

terms of Order 18 Rule 3A CPC was taken on a very serious note by the Co-ordinate Bench of this Court by noticing the fact that the provision requiring the parties to be examined first was inserted by Act 104 of 1976 for a salutary purpose to bring the assertion of the respective parties first before other witnesses could be brought and to ensure that the parties do not cover up every lacuna in evidence of what are brought through witnesses in cross examination. The Court held that any breach of rule will be viewed seriously and may result in eschewing the evidence of the parties, if no permission is taken under Order 18 Rule 3A CPC to examine the party after examination of the witnesses. It was also observed that the trial Court shall not permit evidence to be led, unless it sets out reason in writing justifying grant of such permission.

6. This Court had an opportunity to dilate upon the issue in **CR No.6257 of 2015** titled **Daya Ram Versus Rita and others**, decided on 24.10.2017, wherein it was noticed that on the strength of **The Amritsar Improvement Trust Vs. Ishri Devi, 1979 PLJ 234**, the provision in terms of Order 18 Rule 3A CPC was held to be directory. A procedural rule has to be liberally construed. The interpretation of the procedural rule should not be so strict that it may tend to triumph over justice. The procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice. The provision was held to be directory in nature. The

Court is not divested from jurisdiction to grant permission by recording reasons for granting the same. In appropriate cases, the Court can accord permission to a party at a later stage even though he may not have done so at the very commencement of evidence. It was also noticed that the ratio of Full Bench was not brought to the notice of the Co-ordinate Bench of this Court in **CR No.2385 of 2014** titled **Jaspal Kaur Dhillon Vs. Bittu @ Kulwinder Singh and another** decided on 30.01.2015.

7. Since the parties have reached a consensus during arguments before this Court that the evidence led in the form of testimony of Tara Singh (PW2) be preserved for all intends and purposes and thereafter, plaintiff be allowed to be examined through video conferencing, therefore, I deem it appropriate to maintain the impugned order with a rider that the testimony of PW2 shall be preserved and shall be considered by the trial Court in accordance with law.

8. In view of above, this revision petition is disposed of. All the pending applications are also disposed of accordingly.

16.08.2019
rakesh

(RAJ MOHAN SINGH)
JUDGE

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| 1. | Whether speaking/reasoned | : | Yes/No |
| 2. | Whether reportable | : | Yes/No |