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

**CM No.25771-CII of 2019 in/and
Civil Revision NO.5508 of 2018 (O&M)
Date of Decision: 18.12.2019**

Ishpal

.....Petitioner

Vs

Vineet (minor) son of Harpal Singh and others

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate
for the petitioner.

Mr. Akshay Jindal, Advocate with
Ms. Janya Sirohi, Advocate and
Mr. Samar Ahluwalia, Advocate
for the respondents.

RAJ MOHAN SINGH, J

CM No.25771-CII of 2019

For the reasons mentioned in the application, the same
is allowed. Accompanying documents are taken on record,
subject to all just exceptions.

Main case

[1]. Petitioner has preferred this revision petition against the
order dated 08.08.2018 passed by the Civil Judge (Junior
Division) Karnal whereby the application under Order 6 Rule 17

CPC filed by the plaintiff for amendment of the plaint was dismissed.

[2]. Perusal of the record would show that on 21.03.2018, the case was fixed for cross-examination of DW-7 as well as remaining evidence of the defendants. Plaintiff has already concluded his evidence. DW-7 was not present on that day. A request was made by learned counsel for the plaintiff for summoning of DW-7 for 27.03.2018 as handwriting and fingerprint expert engaged by him was to cross-examine him. The request was accepted by the trial Court and the case was adjourned to 27.03.2018 for cross-examination of DW-7 as well as remaining evidence of the defendants at their own responsibility. It was made clear that no further adjournment shall be granted for the said purpose and the evidence of the defendants shall be deemed to be closed on the next date of hearing, if DW-7 does not appear or he is not cross-examined by learned counsel for the plaintiff.

[3]. On 27.03.2018, DW-7 Sunil Verma was fully cross-examined and learned counsel for defendants No.1 and 7 closed evidence of the defendants by making a separate statement. Learned counsel for the plaintiff prayed for listing of the case for next day for arguments. The prayer was not opposed by the defendants and the case was adjourned for

28.03.2018 for arguments. It was made clear that in case the arguments are not concluded on the next date of hearing, the Court shall proceed to decide the case on merits. Perusal of the aforesaid order would show that the plaintiff himself did not avail opportunity of leading evidence (if any) in rebuttal.

[4]. On 28.03.2018, the case was fixed for arguments, but the arguments were not advanced by learned counsel for the plaintiff. An application under Order 18 Rule 17 read with Section 151 CPC was filed by the plaintiff for recalling of DW-6. The application was dismissed on the basis of arguments raised by the parties on the same date i.e. 28.03.2018. Both the parties prayed for adjournment for arguments. The case was adjourned to 30.03.2018 for arguments and it was made clear that in case arguments are not advanced on the next date of hearing, the Court shall proceed to decide the case on merits. While deciding the application under Order 18 Rule 17 CPC, the trial Court has recorded incriminating facts viz-a-viz. the conduct of the plaintiff. Para Nos.7 and 8 of the order dated 28.03.2018 passed in the application under Order 18 Rule 17 read with Section CPC would be relevant to be quoted. The same reads under:-

“7. Before parting with the order, it would not be out of place to mention that although procedure is handmaid of

justice and to do substantial justice but where it appears that the application has been moved in order to inject the virus of delay, it must meet the fate of dismissal.

8. *Hence, the application in hand stands dismissed for being without any merit. However, I refrain from imposing costs. By stretching principles of natural justice to the farthest extent possible the documents annexed with the application are hereby taken on record as mark 'X' and 'Y' on behalf of the applicant."*

[5]. On 30.03.2018, none appeared on behalf of the plaintiff despite repeated calls. At 11.00 a.m., learned counsel for defendants No.1 and 7 prayed for advancing arguments. The request of learned counsel was allowed and the arguments were heard. In the interest of justice, the case was deferred to post lunch session for arguments (if any) on behalf of the plaintiff. In post lunch session, the plaintiff appeared in-person at 2.00 p.m. and requested for adjournment as his counsel was not present. At the same time, the plaintiff got his statement recorded that DW-5 has produced High School Examination certificate of Vineet in her evidence, wherein his date of birth has been shown as 04.07.2001, but the document is not on the case file. Plaintiff wanted to place on record a photocopy of the document and for that reason, he prayed for an adjournment. When the case was called up, Smt. Mithlesh appeared on behalf of the defendant along with learned counsel for

defendants No.1 and 7 and got her statement recorded to the effect that she has no objection for placing on record the photocopy of document. It was recorded that from cross-examination of DW-5 (mother of Vineet), it is clear that she brought High School Examination Certificate, 2016 in original before the Court, but learned counsel for the plaintiff did not exhibit it for the reasons best known to him. Neither the document was exhibited on behalf of the defendant. Since no objection was given by learned counsel for the defendants, the document was marked as 'X' and the case was adjourned to 11.04.2018 for arguments. It was made clear that, if arguments were not advanced on the next date of hearing, the Court shall decide the case on merits.

[6]. On 11.04.2018, the trial Court recorded some incriminating facts against the conduct of the plaintiff, when the proxy counsel appearing on behalf of the plaintiff sought for adjournment on the ground that main counsel had gone to the Court at Kaithal in relation to some other case. The plaintiff was also not present in-person. Smt. Mithlesh opposed the prayer for adjournment as the same was intended to harass her. Defendants strongly opposed the adjournment. The trial Court after making reference to act and conduct of the plaintiff as reflected in the previous interlocutory orders, recorded the

following observations in para No.5 of the order:

“5. After perusing entire case file and seeing the act and conduct of the plaintiff reflected previous zimnis, the reasons cited for looking adjournment are dismissed for being completely frivolous and unsupported by any medical record or admission ticket of the plaintiff. Another reason that Id. Counsel for the plaintiff has gone to attend some other case is without any merit. Under Order 17 Rule 1 clause 2 CPC an explicit rider in the form of proviso (c) which needs mention:

(c) The fact that the pleader of a party is engaged in another court, shall not be a ground for an adjournment.”

[7]. Vide the aforesaid order, the trial Court also recorded the past proceedings of the Court in para No.6 and thereafter proceeded to criticize the conduct of the plaintiff, however, the Court granted indulgence and adjourned the case for 16.04.2018, subject to cost(s) of Rs.2000/- out of which Rs.1,000/- was to be paid to the defendant-Smt. Mithlesh, remaining amount of Rs.1,000/- was to be deposited in District Legal Aid Authority, Karnal. The cost(s) was paid on the next date of hearing i.e. 16.04.2018. Perusal of the record would further show that on 16.04.2018 itself an application under Order 6 Rule 17 CPC was filed by the plaintiff for amendment in the plaint. The case was fixed for 23.04.2018 for filing reply to

the said application by defendant No.1. Reply to the application was filed and the case was adjourned to 02.05.2018 for arguments on the said application with a clear recital that in the event of not arguing the case on the next date of hearing, the Court shall proceed to decide the case on merits. On 02.05.2018, the case was further adjourned for 23.05.2018 and ultimately the application was dismissed vide the impugned order dated 08.08.2018.

[8]. Learned counsel for the petitioner submitted that the alleged Will was executed by Budhu in favour of defendant No.1-Vineet on 24.07.1999. The mother of defendant No.1 has stepped into witness box as DW-5, who was cross-examined, wherein she deposed that Vineet is her son and he was born on 05.06.1997. DW-5 was again cross-examined on 07.03.2018, wherein she testified with reference to the original school certificate of Vineet that his date of birth is 04.07.2001. In the context of variation in the date of birth projected by DW-5, the plaintiff wanted to counter the Will dated 24.07.1999 and adoption deed dated 05.06.1998 by incorporating the proposed amendment in the plaint to the effect that the date of birth of Vineet is *prima facie* proved to be subsequent to the aforesaid documents.

[9]. I have considered the submissions made by learned

counsel for the parties.

[10]. Evidently, after recording of statement of Smt. Mithlesh Kumari as DW-5, the plaintiff has not availed any opportunity at the stage of leading evidence in rebuttal. The question arises whether anything recorded in the statement of Smt. Mithlesh Kumari DW-5 in the context varying date of birth, would give rise anything to be rebutted by the plaintiff or would give rise to any suspicious circumstances to be argued by the plaintiff in discarding the Will in favour of defendant No.1.

[11]. During course of arguments, learned counsel for the petitioner/plaintiff has admitted this fact that the statement viz-a-viz. difference in the date of birth of defendant No.1 as projected by DW-5 is *prima facie* in favour of the plaintiff and the same can be used as an evidence during course of arguments. If the aforesaid plea is already considered to be a favourable statement by the plaintiff in his favour then nothing is left to be rebutted that too by incorporating the proposed amendment in the plaint.

[12]. Defendant No.10/Smt. Mithlesh Kumari while appearing as DW-5 has tendered her affidavit as Ex.DW-5/A, wherein she has deposed that Harpal (her husband) is also known as Pappu in the village and Vineet is her elder son, who was born on

05.06.1997. She stated on oath that she has not brought her birth certificate and that she will produce the same on the next date of hearing. Her cross-examination was deferred for 27.11.2017 and she was cross-examined again on 07.03.2018. During her cross-examination, she produced High School Examination Certificate, 2016 of Vineet in original in which date of birth of Vineet has been mentioned as 04.07.2001.

[12]. Petitioner/plaintiff seeks to amend the pleadings on the basis of evidence which is not permissible in law. The conduct of the plaintiff has already been deprecated by the trial Court while passing numerous interlocutory orders. The plaintiff never wanted to lead any evidence in rebuttal which is apparent from the order dated 27.03.2018, when he prayed for adjourning the case for arguments on the next date i.e. 28.03.2018.

[13]. It also appears from the record that the plaintiff is involved in getting the trial of the suit delayed on the pretext of one reason or the other and he has not come to the Court with clean hands. The conduct of the plaintiff has to be deprecated by imposing punitive costs.

[14]. In view of observations recorded hereinabove, this revision petition is dismissed with cost(s) of Rs.20,000/- to be paid to the mother of respondent No.1/defendant No.1 for

unnecessary dragging her in the litigation.

[15]. Payment of cost(s) shall be the condition precedent for allowing the petitioner/plaintiff to proceed with the suit. In the event of non-payment of aforesaid cost(s), the trial Court shall be at liberty to dismiss the suit.

December 18, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No