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202 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of decision : 16.01.2019

Parkash Karat General Secretary C.P.I. (M) and others

... Petitioners

Versus

Balwant Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.S. Deol, Advocate for the petitioners.

Mr. R.S. Sidhu, Advocate for the respondent.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order, whereby an application of the plaintiff, at the stage of defendant's evidence, under Order 18 Rule 3A of the Code of Civil Procedure, has been allowed.

Learned counsel for the petitioners-defendants submitted that the respondent-plaintiff had filed the civil suit for recovery of ₹1,00,00,000/- (one crore) as damages on account of defamation. When the defendants had already examined three witnesses, an application under Order 18 Rule 3A of CPC was moved, which has erroneously been allowed barring the defendant himself examined in the absence of any permission. In support of his contentions, reliance has been laid down to the *ratio decidendi* culled out by the Full Bench of this Court in **“The Amritsar Improvement Trust V/s Ishri Devi” 1979 (2) RCJ 422**, to contend that such a direction is not mandatory, but directory, thus, urges this Court for setting aside the impugned order.

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Learned counsel appearing on behalf of respondent-plaintiff supported the impugned order and submitted that permission was required, therefore, the defendants had lost the right to examine himself, thus, urges this Court for dismissal of the present revision petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Deol, for, once the defendants had already led evidence and examined three witnesses, despite the objection of the plaintiff, permission is implied. In my view, the trial Court has rightly granted the permission to the defendants to lead evidence. The said objection on behalf of the plaintiff cannot be permitted to be raised at a subsequent stage.

The Full Bench of this Court in the referred authority has held that the provisions of Order 18 Rule 3-A CPC are not mandatory but directory in nature. For the sake of brevity, the relevant Paras 7 to 12 read as follows:-

"7. At the very outset it may be noticed that some conflict of precedent which existed earlier now stands resolved and there is now no discordant note. As is evident from above, the very cornerstone of the argument in favour of the petitioner was rested on Jagannath Nayak's case (supra) : That view has, however, been recently overruled by an exhaustive judgment of a Division Bench of that very court reported in Maquni Devi v. Gauranga Sabu, 1978 Cut. W.R. 107. Therein it has been held categorically that Order 18, Rule 3-A, is directory in nature and in proper cases the court has got the power to accord permission to a party to appear at a later stage even though he may not have done so at the very commencement of his evidence. A similar view has been expressed by the Allahabad Court in the judgment reported as Mohd. Aqil v. Alimulla,

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1978(2) R.L.R. 554. Even in this court a learned Single Judge in Niranjana Lal v. Punjab State Electricity Board, Patiala, (supra) has opined to the same effect and, as already noticed, the Division Bench in M/s Kwaliti Restaurant, Amritsar's case (supra) has expressed a similar view. Learned counsel for the petitioner had conceded his inability to cite any precedent to the contrary, and it is, therefore, plain that the weight of authority is uniformly against the stand taken by the petitioner.

8. An examination of the matter on principle is however now 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

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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

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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.

10. Coming now to precedents, in view of the fact that Jagannath Nayak's case (supra) has itself been overruled by a Division Bench of its own court, it would obviously be wasteful to examine or refute its rationale. It suffices to mention that some reliance was placed on the legislative history of the provision and in particular the report of the Law Commission for taking that view, which was considered and repelled in M/s Kwaliti Rastaurant, Amritsar's case (supra) to which a detailed reference can be made on this specific point. Again it would be wasteful to tread the same ground over again and agreeing with the reasoning of the Division Bench in Maquni Devi's case (supra) and the Allahabad view in Mohd. Aqil's case (supra), I would hold that the provisions of rule 3-A are directory in nature and the court is not denuded of jurisdiction to grant permission when an application therefor is made for good reasons even at a later stage.

11. The matter is capable of being viewed from another angle as well. Apart from the issue of the rule being mandatory or directory, it is clear that the command laid therein regarding the party appearing before his other witnesses has been itself provided with an exception where permission to do otherwise

can be accorded by the court for adequate reasons. When the provision itself provides both the mandate and an exception thereto, the one cannot be divested from the other. The significant thing to highlight here is that the true question at issue is not with regard to the ordinary rule that party shall appear before any witness on his behalf appears, but pertains to the stage at which such permission to appear at a later stage is to be secured. Whilst the ordinary rule with the exception thereto may normally be adhered to there appears to be nothing inflexible in rule 3-A with regard to the stage of securing the permission as such. I would, therefore, hold that such permission may also be sought at a later stage and if the court finds merit in the same it would not be debarred from acceding to such a prayer. Equally it deserves to be recalled that the Legislature has itself prescribed a certain safeguard by laying down the requirement or the recording of reasons for doing so.

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."

Keeping in view the aforementioned facts, the impugned order,

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under challenge, suffers from illegality, perversity, much less, without jurisdiction and the same is hereby set aside and the present revision petition stands allowed.

16.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No