

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

CR No.6713 of 2018

Date of Decision: 30.04.2019

Bakshish Kaur.

...Petitioner

Versus

Akwinder Kaur @ Gurmit Kaur & ors.

...Respondents

Coram : Hon'ble Mr. Justice B.S.Walia

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

Respondent No.1 *ex parte*..

B.S.Walia, J (Oral),.

[1] Civil Revision Petition has been filed under Article 227 of the Constitution of India, challenging Order dated 17.08.2018 (Annexure P-6), passed by the Court of Ms. Rajbeer Kaur, PCS, Civil Judge (Junior Division), Jalandhar in Civil Suit No.193/2014, in case titled as '**Akwinder Kaur @ Gurmit Kaur versus Bakshish Kaur and others**', whereby the application for conducting DNA test of the respondent-plaintiff/Akwinder Kaur @ Gurmit Kaur with petitioner-defendant No.1/Bakshish Kaur was allowed on the ground that the paternity/maternity issue was the main issue in the case and that no prejudice would be caused if the application was allowed as DNA test was a scientific test and its accuracy was 99.99% and was widely used for ascertaining the paternity of a person and petitioner-defendant No.1 had denied that the respondent-plaintiff was her daughter. It was further observed that in case petitioner-defendant No.1 refused to undergo DNA test then an adverse inference would be drawn against her.

[2] On notice having been issued, Mr. Sanjeev K. Virk, learned counsel put in appearance on behalf of respondent No.1 and filed memo of appearance and requested for a short date to argue the matter. On request of learned counsel for respondent No. 1, the case was adjourned to 14.11.2018. On 14.11.2018, learned counsel for respondent No.1 again requested for an adjournment to enable him to place certain documents on record, whereupon, the case was adjourned to 04.12.2018. On 04.12.2018, Mr. Sanjeev K. Virk, Advocate, learned counsel for respondent No.1 again requested for some more time to place documents on record. The case was adjourned to 13.12.2018. On 13.12.2018, the case was adjourned by order to 23.01.2019. On 23.01.2019, none put in appearance on behalf of respondent No.1, whereupon, in the interest of justice, the case was adjourned to 25.03.2019. On 25.03.2019, despite the case having been called out twice, none put in appearance on behalf of respondent No.1. Accordingly, respondent No.1 was proceeded *ex parte* and the case was adjourned to 09.04.2019 while ordering the same to be shown in the urgent list. On 09.04.2019, Mr. Navraj Singh, Advocate put in appearance on behalf of Mr. Sanjeev K. Virk, Advocate for respondent No.1 and requested for an adjournment on the ground that the learned arguing counsel was unwell. In the circumstances, in the interest of justice, the case was adjourned to 30.04.2019. Today, i.e. 30.04.2019, none has put in appearance on behalf of the respondents. In the circumstances, I am not inclined to adjourn the case any further, as neither the documents sought to be placed on record have been filed, nor there appears to be any intention of counsel for respondent No.1 to argue the matter. Accordingly, respondent No. 1 is proceeded ex-parte and with the assistance of learned

counsel for the petitioner, I have gone over the case and have considered the submissions advanced.

[3] Brief facts of the case, leading to the filing of the application are that respondent No.1-plaintiff had filed a suit, seeking declaration that she is the daughter of deceased Harbans Singh and Will dated 15.02.2011, executed by deceased Harbans Singh in favour of petitioner-defendant No.1/Bakshish Kaur widow of Harbans Singh was illegal, null and void and further relief of permanent injunction was prayed for against the defendants. Respondent No.1/plaintiff pleaded that she and defendant Nos.2 to 6 therein, i.e. respondent Nos.2 to 6, were daughters of deceased Harbans Singh while petitioner-defendant No.1 was widow of deceased Harbans Singh. On the other hand, petitioner-defendant No.1 and respondent Nos.2 to 6 took up the plea that respondent No.1/plaintiff was not the daughter of Harbans Singh and defendant No.1. It was pleaded by the petitioner-defendant No. 1 that there was one daughter of Harbans Singh, who left the house of Harbans Singh and petitioner-defendant No.1 against their wishes and thereafter got married without the consent of petitioner-defendant No.1 and other family members. During cross-examination, petitioner-defendant No.1 specifically stated that respondent No.1/plaintiff, present in Court, was not her daughter.

[4] It was in the aforementioned circumstances that application was moved for conducting DNA test of respondent No.1/plaintiff Akwinder Kaur @ Gurmit Kaur with petitioner-defendant No.1/Bakshish Kaur, on the ground that petitioner-defendant No.1 had specifically stated during her cross-examination that respondent No.1/plaintiff was not her daughter, who was present in Court, therefore, in order to ascertain the paternity of Akwinder

Kaur @ Gurmit Kaur, DNA test was essential to establish that respondent-plaintiff/Akwinder Kaur @ Gurmit Kaur was the biological daughter of petitioner-defendant No.1 and deceased Harbans Singh.

[5] During the course of arguments, learned counsel for the petitioner contended that he confined his submissions to the plea that issue No.1 was whether the plaintiff was entitled to relief of declaration as prayed for with onus of aforementioned issue in the suit for declaration that respondent No.1-plaintiff was the daughter of Harbans Singh as also of the petitioner-defendant No.1 being on respondent No.1-plaintiff and evidence of respondent No. 1 plaintiff was closed vide order dated 07.09.2017 after she had led evidence in respect thereto. Learned counsel contends that in the circumstances, subsequent application moved by respondent No.1-plaintiff for DNA test on the ground that in defence evidence, petitioner defendant No.1 had denied respondent No.1-plaintiff to be the daughter of Harbans Singh, as also of petitioner-defendant No.1. was not maintainable.

[7] I have considered the submission of learned counsel for the petitioner and have gone over the record.

[8] Admittedly, Civil Suit was filed by respondent No.1-plaintiff for seeking a declaration that she was the daughter of deceased Harbans Singh and Will dated 15.02.2011, executed by deceased Harbans Singh in favour of petitioner-defendant No.1 was illegal, null and void and she further sought the relief of permanent injunction against the petitioner-defendant No.1 and other defendants, i.e. respondent Nos.2 to 6. Respondent No.1-plaintiff had pleaded that she and respondent Nos.2 to 6 were daughters of deceased Harbans Singh and petitioner-defendant No.1. Since, the suit was filed by

respondent No.1-plaintiff for the relief as referred to above amongst the other issues framed, issue No.1 was whether plaintiff was entitled for relief of declaration as prayed for? OPP

[9] Thus, it was incumbent upon respondent No.1-plaintiff to have led evidence in respect thereto. Respondent No.1-plaintiff closed her evidence on 07.02.2017,whereafter petitioner-defendant No.1 gave evidence that respondent No.1-plaintiff was not her and Harbans Singh's daughter. It is thereafter that respondent No.1-plaintiff moved an application for DNA test of petitioner-defendant No.1 and herself in order to establish her paternity. The onus of establishing issue No.1 as to whether respondent No.1/plaintiff was entitled to seek the relief of declaration as prayed for was on respondent No.1-plaintiff, therefore, whatever evidence was required to be led should have been led by her in the affirmative and it was not open to her to lead evidence in respect thereto during the evidence of petitioner-defendant No.1. In the circumstances, the impugned order having been passed, contrary to the proposition of law namely that the party on whom the onus is placed qua any issue for which it wishes to lead evidence is required to lead evidence in respect thereto in the affirmative and not afterwards, not having been complied with it was not open to respondent No.1-plaintiff to have moved an application for DNA test pursuant to the denial by petitioner-defendant No.1 in her evidence that respondent No.1-plaintiff was her daughter. The onus was on respondent No.1-plaintiff and having failed to lead evidence at the appropriate stage, it was not open for her subsequently to lead evidence in the garb of moving an application for DNA test in order to overcome the lacuna. For the reasons as are mentioned above, the impugned order is legally

unsustainable, consequently, the revision petition is ***allowed*** and the impugned order (Annexure P-6) dated 17.08.2018 is *set aside*.

(B.S.WALIA)
JUDGE

April 30, 2019
‘Rajneesh’

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No