

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

**CR No.7368 of 2018(O&M)
Date of Decision: 04.09.2019**

Vidya Sagar Kakar

.....Petitioner

Versus

Sanjay Kumar 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. Adarsh Jain, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the order dated 11.10.2018 passed by Civil Judge (Junior Division), Karnal, vide which application under Section 151 CPC and under Section 165 of the Evidence Act filed by defendant No.1 to lead further evidence after recalling the order dated 20.08.2018 was allowed.

[2]. Vide order dated 20.08.2018, the evidence of the defendants was closed after observing that the defendants had

already availed 16 effective opportunities. Examination-in-chief of DW 3 Sanjay Kumar Jhamb was complete except for his cross-examination and remaining evidence of the defendants was ordered to be closed by order of the Court. The case was adjourned to 11.09.2018 for cross-examination of DW 3 Sanjay Kumar Jhamb. The suit was filed in the year 2013 and was brought in action plan. Vide order dated 18.11.2017, the case was adjourned to 24.11.2017 for defendants evidence. Till 20.08.2018, despite numerous effective opportunities, defendants could not conclude their evidence except examination-in-chief of DW 3.

[3]. On 11.09.2018, learned counsel for the defendants submitted that due to in-different health, the witness could not appear. He was having some medical problem and his wife was discharged from hospital on 08.09.2018. Learned counsel for the defendants further contended that the witness was not mentally fit enough to be cross-examined. The prayer was opposed by learned counsel for the plaintiff. The trial Court accepted the request of learned counsel for the defendants and last opportunity was granted to the defendants to conclude the entire evidence of DW 3 subject to payment of costs of Rs.1000/- to be deposited in DLSA. It was also observed that no further opportunity shall be granted for cross-examination of

Sanjay Kumar Jhamb (DW 3), otherwise, it would be closed by order of the Court on the adjourned date i.e. 24.09.2018.

[4]. Perusal of order dated 24.09.2018 would show that cross-examination of DW 3 Sanjay Kumar Jhamb was recorded completely. The amount of costs was paid. On that day, learned counsel for defendant No.3 filed an application for permission to lead evidence of handwriting and fingerprint expert. The prayer was rejected by the trial Court after noticing incriminating facts. The case was adjourned to 03.10.2018 for rebuttal evidence (if any) and for arguments.

[5]. On the adjourned date i.e. 03.10.2018, the application under Section 151 CPC and under Section 165 of the Evidence Act came to be filed to lead further evidence after recalling the order dated 20.08.2018. The prayer was to tender some documents and to examine attesting witness of the Will in favour of defendant No.3. Handwriting expert was sought to be examined in the evidence of defendant No.1 on the ground that the same was *sine quo non* for proving the case of defendant No.1. Defendant No.1 was cross-examined on 24.09.2018 and the prayer for adjournment for examination of handwriting expert was dismissed and the case was adjourned for rebuttal evidence (if any) and for arguments.

[6]. Order dated 24.09.2018 was passed after considering

the import of orders dated 20.08.2018 and 11.09.2018 passed by Civil Judge (Junior Division), Karnal. The case was adjourned to 03.10.2018 for rebuttal evidence (if any) and for arguments. On the same day, the application in question was filed by defendant No.1 for tendering some documents besides examining attesting witness of the Will and handwriting expert. The prayer was allowed by the Civil Judge (Junior Division), Karnal subject to payment of costs of Rs.5000/- to be deposited in DLSA, Karnal on the ground that dispute is related to the Will and controversy would be resolved if one effective opportunity is granted to defendant No.1 to conclude his evidence on the adjourned date.

[7]. The impugned order in a way has taken away the rigour of orders dated 20.08.2018, 11.09.2018 and 24.09.2018. Order dated 20.08.2018 was passed after noticing incriminating facts that the defendants could not conclude their evidence despite 16 effective opportunities. The prayer for examining handwriting and fingerprint expert was declined vide order dated 24.09.2018. Impugned order in a way has reviewed the order dated 24.09.2018 without there being any challenge to that effect. Such an indulgence granted by the trial Court cannot be endorsed as the same would have the effect of review of order dated 24.09.2018 which was never challenged by the petitioner

in any Forum.

[8]. In para No.3 of the application under Section 151 CPC and under Section 165 of the Evidence Act, following facts were pleaded:-

“3. That on the last date of hearing i.e. 24.09.2018 the applicant was duly cross-examined but the application filed by him for permission to get a handwriting expert examined on his behalf was rejected by this Hon'ble Court.”

[9]. Perusal of the aforesaid paragraph would show that the prayer for examination of handwriting expert was rejected on 24.09.2018 when defendant No.1 was cross-examined.

[10]. In view of aforesaid factual position, I do not endorse the view expressed by Civil Judge (Junior Division), Karnal. The impugned order is thus set aside. Revision petition is allowed. Trial Court shall proceed further in accordance with law.

04.09.2019

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**(RAJ MOHAN SINGH)
JUDGE**

Whether reasoned/speaking Yes/No

Whether reportable Yes/No