

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 7740 of 2018
Date of decision:11.2.2019

Anoop Kumar and others

.. Petitioners

v.

Kulbir Singh and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sameer Sachdeva, Advocate for the petitioners.

...

AVNEESH JHINGAN, J. (Oral)

The present civil revision petition has been filed being aggrieved of the order dated 14.5.2018 passed by Civil Judge (Junior Division), Garhshankar (hereinafter described as 'civil court') allowing the application filed under Order X Rule 2 of the Code of Civil Procedure, 1908 (for short, 'CPC') ordering personal appearance of petitioners No. 2 to 6 (defendants No. 10 to 14 in the amended counter claim) (hereinafter described as 'defendants No. 10 to 14') who are being represented through attorney-Anoop Kumar (defendant No. 15 in the amended counter claim) and order dated 6.10.2018 dismissing the application for re-calling the order dated 14.5.2018.

The facts in brief are that respondent No. 3-Ranjodh Singh filed a suit for declaration to the effect that he along with defendant No. 10 as well as defendants No. 19 to 28 be declared owners in possession of ½ share out of land measuring 390 kanals belonging to Raj Singh son of Bhulla

Singh.

During the pendency of the suit, respondents No. 1 and 2 (defendants No. 3 and 4 in the suit), who are also legal heirs of Raj Singh, in whose property respondent No. 3 had asked for a share, filed an application under Order X Rule 2 CPC for personal appearance of defendants No. 10 to 14. On their behalf, the suit is being defended by their power of attorney holder, namely, Anoop Kumar. It was alleged in the written statement and the application that defendant No. 14 is no longer in the world or is missing. The said application was allowed. The civil court relying upon Order X Rule 2 CPC ordered personal appearance of defendants No. 10 to 14. It was further ordered that in case they are unable to appear in person in court, they must appear through video conferencing.

Learned counsel for the petitioners argues that earlier the matter regarding partition was filed by the petitioners before the revenue authorities. The matter went upto the Supreme Court where it was held that defendants No. 3 and 4 were delaying the matter of partition. He further argues that in the proceedings arising out of the litigation before the revenue authorities, defendants No. 10 to 14 were impleaded as party through petitioner No. 1-Anoop Kumar as power of attorney. He states that there is no occasion to call defendants No. 10 to 14 for personal appearance in Court or through video conferencing.

The contentions raised by learned counsel for the petitioners lack merit. The litigation is among the relatives. Learned counsel for the petitioners was not able to dispute the fact that for last 5-6 years, defendants No. 10 to 14 have not visited India. He has not been able to point out any prejudice caused to the petitioners by the impugned order, more so when the

civil court has provided an alternative that they can appear through facility of video conferencing.

Order X Rule 2 of the CPC is reproduced below:

“
ORDER X
EXAMINATION OF PARTIES BY THE COURT

XX XX XX

2. Oral examination of party, or companion of party.- (1) At the first hearing of the suit, the Court--

(a) shall, with a view to elucidating matters in controversy in the suit, examine orally such of the parties to the suit appearing in person or present in Court, as it deems fit; and

(b) may orally examine any person, able to answer any material question relating to the suit, by whom any party appearing in person or present in Court or his pleader is accompanied.

(2) At any subsequent hearing, the Court may orally examine any party appearing in person or present in Court, or any person, able to answer any material question relating to the suit, by whom such party or his pleader is accompanied.

(3) The Court may, if it thinks fit, put in the course of an examination under this rule questions suggested by either party.”

From the perusal of the Rule, it is evident that the court is empowered to examine any person able to answer any material question relating to suit. In the present case, defendants No. 10 to 14 would be able

more so when in the pleadings there is dispute to power of attorney and it is also not certain that defendant No. 14 is alive or not. There should not be any hitch or apprehension to the petitioners to put at rest the fact that Anoop Kumar is having a valid power of attorney and defendant No. 14 is alive and has appointed Anoop Kumar as her attorney. It is pertinent to note that in this petition, it has been referred that defendant No. 14 is 85 years old.

The contention raised by learned counsel for the petitioners that defendants No. 3 and 4 are trying to delay the matter is not well founded. Since the order is dated 14.5.2018, almost more than 8 months have passed, defendants No. 10 to 14 have neither appeared before the court in person nor through vide conferencing which itself has resulted in delay.

The impugned order dated 14.5.2018 is within the scope of Order X Rule 2 CPC. No interference is called for in the impugned order. Accordingly, the present revision petition is dismissed.

(AVNEESH JHINGAN)
JUDGE

11.2.2019
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No