

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

CR 3813 of 2014 (O&M)

Date of Decision: April 08, 2022

Mohan Singh and another ...Petitioners
Versus
Lakhbir Singh and another ... Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Rajinder Singla, Advocate
for the petitioners.

Mr. Malkeet Singh, Advocate
for respondent No. 1.

FATEH DEEP SINGH, J. (Oral)

In a civil suit titled as **Lakhbir Singh Vs. Mohan Singh and others** by way of declaration that the plaintiff is the exclusive co-owner in possession of the property as fully detailed and described in the head note of the plaint and in which suit, question of Will was subject matter of challenge.

During the course of proceedings of the suit in the court of

learned Civil Judge, Junior Division, Phillaur, an application under Order 26 Rule 4 CPC was moved by the revisionist Mohan Singh and another seeking appointment of Commission to record the statement of the marginal witnesses of unregistered Will who were residents of Canada. On the same application, learned Addl. Civil Judge (Senior Division) Phillaur passed order dated 31.03.2014, the operative part of said order is reproduced as under:-

“In the present case also the evidence of the above said witnesses namely, Kamaldeep Brar and Surinder Binepal are very much necessary, Accordingly, the application filed by the plaintiff is allowed and Sh. H.S. Malhi, Advocate is appointed as Commission to record the statement of above said witnesses namely, Kamaldeep Brar and Surinder Binepal or interrogatories. However, the commission will issue a prior notice to the counsel for the parties before his visit for examination. His

fee is assessed as Rs.20,000/-. Plaintiff is also directed to pay all the expenditure of travelling and lodging of the commission. Both the parties are directed to submit their interrogatories to the commission within 10 days. To come up on 16.05.2014 for evidence of the plaintiff.”

And the same is the subject matter of challenge in this revision petition.

Heard Mr. Rajinder Singla, Advocate for the petitioners and Mr. Malkeet Singh, Advocate for respondent No.1.

No doubt, the provisions by way of Chapter 10 Part (D) of Volume 1 of the Punjab and Haryana High Court Rules and Orders provides for issuance of letter of request for examination of the witnesses through delivery of interrogatories but having regard to the sensitivity of the subject matter of this dispute which is a Will and massive chunk of landed property it may not be appropriate if the mere delivery of interrogatories

would subserve the purpose. Though on behalf of the respondent reliance is sought to be placed on **M/s Filmistan Private Ltd., Bombay Vs. M/s Bhagwandas Santprakash and another** 1971 AIR (SC) 61 and **Harvel Singh Dhillon and another Vs. Balbir Singh Dhillon and others** CR No. 7087 of 2013 (O&M) to hold out that there cannot be an effective cross-examination of the witnesses besides entailing heavy costs and which is controverted by Mr. Rajinder Singla, learned counsel for the respondent who has cited **Sat Pal Dhawan and another Vs. Davinder Singh Aulakh and others** 2017 (1) PLR 166.

Appreciating the submissions, this Court in Single bench view **Sat Pal Dhawan's** case (supra) in a similar situation holding that it would not be possible for a person to travel to India and testify besides keeping in view the prevalent pandemic of Covid 19 which is again fast spreading and as has been held in **Dutch Ophthalmic Research Centre Vs. Ultramed Private Ltd.** 2005(3) R.C.R. (Civil) 159 and **Milano**

Impex Private Ltd. Vs. Egle Footwear Pvt. Ltd. and others

2012(188) DLT 202, the Court can entrust such a task to responsible persons for examination of witnesses through video conferencing between this Country and Canada where the witnesses are stated to be residing with following **directions:-**

- (i) Evidence of the witnesses shall be recorded through video conferencing between Jalandhar, India and Canada upon full particulars including present address and ensuring their identities.
- (ii) In Jalandhar, the video conferencing shall be conducted in the facilities available in the District Courts.
- (iii) Nodal Officer (Computers), Jalandhar, under the guidelines/help of Registrar (Computers) of this Court, is appointed as the coordinator with regard to the technical aspects of video conferencing in the Indian High Commission, Canada.
- (iv) The Indian High Commissioner at Canada shall nominate a senior officer not below the rank of Deputy Secretary of India to facilitate video conferencing. The officer nominated by the Indian High Commission shall co-ordinate the video conferencing arrangements in

Canada and shall remain present at the time of recording of the evidence of the witnesses.

(v) The officer nominated by the Indian High Commissioner in terms of the direction at serial no.(iv) above shall ensure that apart from his own presence, the only counsel for the petitioners/defendants is present at the time of video conferencing. He shall ensure that no manner of prompting by word or signs or by any other mode is permitted.

(vi) The officer nominated by the Indian High Commission shall verify the identity of the witness before commencement of his examination.

(vii) As soon as identification part is complete, oath will be administered by the Presiding Officer through the media as per [Oaths Act](#), 1969.

(viii) The witnesses shall be examined during working hours of Indian Courts. The plea of any inconvenience on account of time difference between India and Canada shall not be allowed. However, the convenience of the Indian Consulate in Canada shall be taken into consideration in fixing the time and schedule.

(ix) The cross-examination, as far as practicable, be proceeded without any interruption and without granting unnecessary adjournments. However, discretion of the Presiding Officer shall be respected.

(x) The Presiding Officer may record any material remarks regarding the demeanor of the witness while on the screen and shall note the objections raised during recording of evidence.

(xi) The deposition of the witness shall be signed immediately in the presence of the nominated officer of the Indian High Commission. The said officer shall certify/attest the signatures of the witness.

(xii) The audio and visual shall be recorded at both the ends and copies thereof shall be provided to the parties at the expense of the petitioners/defendants.

(xiii) The petitioners/defendants shall bear the cost/expenses of the video conferencing. The likely expenses for the video conferencing to be undertaken in Canada shall be informed to the petitioners/defendants through counsel by the Indian High Commissioner in advance. However, in case of any difficulty, the same may be communicated to the Registrar (Computers) of

this Court by e-mail, who shall communicate the same to the petitioners/defendants lawyer in India.

(xv) The officer of the Indian High Commission to be nominated by the Indian High Commissioner shall be paid a lump sum amount of Rs.50,000/- per hearing as honorarium by the petitioners/defendants

(xvi) The petitioners/defendants shall deposit an amount of Rs.50,000/- as cost of preparation of the certified copies with the respective Agency of District Court, Jalandhar within two weeks from today. The said Agency shall thereafter prepare certified copies of the entire record of the case, which shall be sent in separate folders clearly marked as order sheets; pleadings; applications; plaintiff's documents and defendant's documents. The same shall be forwarded to the office of Indian High Commissioner with the assistance of Ministry of External Affairs.

(xvii) This record shall be made available to the officer nominated by the Indian High Commissioner for the purpose of undertaking the video conferencing as it would be necessary for recording the statement and cross examination of the witness.

(xviii) In case, the plaintiffs are desirous of being physically present in Canada at the time of recording of the evidence, it shall be open for them to make arrangements on their own cost and expense for appearance and their representation. The plaintiffs shall ensure that prior intimation in this regard be furnished to the Presiding Officer giving full particulars of the names of the persons as well as enclosing documents of authority in respect of the persons, who shall be representing them in the proceedings. The intimation in this regard as well as documents shall also be furnished to Indian High Commission in Canada

In the light of the same witnesses of the petitioner namely Kamaldeep Barar and Surinder Beniwal of alleged marginal witnesses of the Will dated 06.01.2010 be examined through Video Conferencing and to enable such a process to be undertaken intimation needs to be given in Indian High Commission in Canada within 02 months of this order and above detailed two marginal witnesses shall be cross-examined through Video Conferencing. This will rather facilitate recording of evidence and ensure that any chance of tampering with the

electronic evidence is not undertaken. More so, it will save the precious time of the Court that of the Commission so appointed besides bringing in more efficiency in setting a process in view of the advancement in technology which the Court are directed to introduce in dispensation of judicial system.

In the light of the same, the impugned order dated 31.03.2014 (Annexure P-9) so passed by the learned Court below is hereby modified and Mr. Kamaldeep Brar and Surinder Beniwal are directed to be examined through video conferencing on the above conditions.

The petition stands disposed off accordingly.

April 08, 2022

amit rana

(FATEH DEEP SINGH)**JUDGE**

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