

In the High Court of Punjab and Haryana, at Chandigarh

1. Civil Revision No. 4288 of 2017 (O&M)

Ashok Kumar Aneja
... Petitioner(s)

Versus

Smt. Raj Kumari Aneja and Others
... Respondent(s)

AND

2. Civil Revision No. 4798 of 2017 (O&M)

Raj Kumari Aneja
... Petitioner(s)

Versus

Ashok Kumar Aneja and Others
... Respondent(s)

DATE OF DECISION: 03.08.2022

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Akshay Bhan, Senior Advocate
 with Mr. Alok Mittal, Advocate
 for the petitioner (In CR-4288-2017)
 and the respondent No. 1 (In CR-4798-2017).

Mr. Sanjiv Kumar Aggarwal, Advocate
 for the respondent No. 1 (In CR-4288-2017) and
 the petitioner (In CR-4798-2017).

Anil Kshetarpal, J.

1. The plaintiff as well as the defendant No.1 assail the correctness of the two different interlocutory orders passed by the learned trial Court in a pending suit. Unfortunately, the family members are fighting litigation in the Court. The dispute is with regard to the property of Sh.Kundan Lal Aneja. The defendant No.1-Smt. Raj Kumari Aneja (daughter-in-law of Sh.Kundan Lal Aneja) claims that Sh.Kundan Lal Aneja sold/transferred the property vide a registered sale deed in her favour,

whereas, the plaintiff (Sh.Ashok Kumar Aneja) claims that the aforesaid sale deed is illegal, null and void.

2. On 15.05.2017, the learned trial Court permitted the plaintiff to lead rebuttal evidence in order to examine the bank official who was required to bring the statement of account of Sh.Kundan Lal Aneja. After the witness was examined and cross-examined, the defendant No.1 filed an application for permission to lead additional evidence to examine Smt.Urmil Arora (defendant No.4), who is the daughter of Sh.Kundan Lal Aneja. The learned trial court has allowed the said application on 25.05.2017.

3. Heard the learned counsel representing the parties, at length and with their able assistance perused the paper-books.

4. The learned senior counsel representing the plaintiff contends that the evidence sought to be produced in additional evidence was in the knowledge of the defendant No.1, therefore, she could not be permitted to lead additional evidence. He further contends that Smt.Urmila Arora (defendant No.4) was proceeded against *ex parte* in the suit, therefore, she could not be examined by defendant No.1 as her own witness. On the other hand, the learned counsel representing the petitioner (defendant No.1) in Civil Revision No. 4798 of 2017 submits that the order passed by the learned trial Court, permitting the plaintiff to examine the bank official in rebuttal evidence, was not permissible as the evidence sought to be led is affirmative in nature.

5. The learned trial Court, on appreciation of the material available on the file, found that the evidence of Smt.Urmil Arora (defendant No.4)

has recorded that it is necessary to examine Smt. Urmil Arora.

6. The learned senior counsel representing the plaintiff relies upon the judgment passed by the Supreme Court in ***Modula India v. Kamakhya Singh Deo (1988) 4 SCC 619***. He draws the attention of this Court to para 24 of the said judgment, which reads as under:-

“24. For the above reasons, we agree with the view of Ramendra Mohan Dutta, ACJ that, even in a case where the defence against delivery of possession of a tenant is struck off under section 17(4) of the Act, the defendant, subject to the exercise of an appropriate discretion by the court on the facts of a particular case, would generally be entitled:

(A) to cross-examine the plaintiff's witnesses; and

(b) to address argument on the basis of the plaintiff's case.

We would like to make it clear that the defendant would not be entitled to lead any evidence of his own nor can his cross-examination be permitted to travel beyond the very limited objective of pointing out the falsity or weaknesses of the plaintiff's case. In no circumstances should the cross-examination be permitted to travel beyond this legitimate scope and to convert itself virtually into a presentation of the defendant's case either directly or in the form of suggestions put to the plaintiff's witnesses”.

7. From the reading of the above-mentioned extracted portion, it is evident that the Supreme Court held that the defendant cannot be examined in a case where the defence has been struck off. In the present case, the defence of the defendant No.4 has not been struck off. In any case, she is sought to be examined by defendant No.1 who is contesting the suit. The

learned Presiding Judge of the trial Court, where the suit is pending, is seized of the entire matter. He, in his wisdom, considers such evidence to be necessary. The Court has *suo motto* power to call upon the witness to appear.

8. Hence, there is no substance in the Civil Revision No. 4288 of 2017.

9. As regards the Civil Revision No. 4798 of 2017, the same has been filed by the defendant No.1. The rebuttal evidence was allowed on 15.05.2017, whereas, the official was examined on 20.05.2017. This revision petition has been filed after the official has been examined as well as after the plaintiff had filed Civil Revision No. 4288 of 2017. This is clearly an afterthought.

10. Once the witness has already been examined and the defendant No.1 has also been granted an opportunity, this Court does not find it appropriate to interfere, at this stage.

11. It would be noted here that the plaintiff has also been granted an opportunity to lead counter-evidence in response to the permission to lead additional evidence granted to the defendant No.1.

12. Keeping in view the aforesaid facts, no ground is made out to interfere in both the revision petitions. Hence, both the revision petitions are dismissed. The miscellaneous application(s) pending, if any, in both the revision petitions shall stand disposed of.

**(Anil Kshetarpal)
Judge**

August 03, 2022
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No