IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

Civil Revision No.6185 of 2017 (O&M)
DATE OF DECISION : 26.04.2022

Nirmal Singh .....Petitioner

versus

Municipal Corporation, Jalandhar and Others .....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. M.L. Saggar, Senior Advocate with
Mr. Tejeshwar Singh Sullar, Advocate for the petitioner

Mr. Tarun Seth, Advocate for
Mr. Sumit Jain, Advocate for respondent Nos.1 and 2

Mr. Ashish Grover, Advocate for respondent No.3

..

ALKA SARIN, J.:

The present revision petition has been filed under Article 227 of the Constitution of India impugning the order dated 28.08.2017 passed by the Additional Civil Judge (Senior Division), Jalandhar whereby the plaintiff-petitioner has been directed to cross-examine the witness DW-Vinod Kumar at the first instance and thereafter the learned counsel for defendant-respondent No.3 would have the right to cross-examine the said witness.

The learned counsel for the plaintiff-petitioner would contend that the entire case as set up by the plaintiff-petitioner is that there has been

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collusion between the defendant-respondents i.e. officials of defendant-respondent Nos.1 and 2 and defendant-respondent No.3. The learned counsel would further contend that the property of the plaintiff-petitioner has been damaged by the illegal and unlawful construction raised by defendant-respondent No.3 and yet no action has been taken by defendant-respondent No.1. It is further the contention that in case the plaintiff-petitioner has to cross-examine DW-Vinod Kumar at the first instance the lacunae would be covered up by further cross-examination of DW-Vinod Kumar by defendant-respondent No.3. In support of his arguments, the learned counsel has relied upon judgments passed by this Court in the case of **Mohinder Singh Gill vs. Jagdeep Singh and others [2013(1) RCR (Civil) 569]** and **Pritpal Singh Aurora vs. Rajinder Singh Aurora and others [2009(3) RCR (Civil) 574]** to contend that in order to protect the right of the plaintiff the co-defendant should be directed to conduct *inter se* cross-examination prior to the plaintiff so that they do not demolish the case of the plaintiff by putting leading questions to each other.

Per contra, the learned counsel for the defendant-respondents have contended that there is nothing adverse which has come in the evidence of DW-Vinod Kumar as has been held by the Trial Court in the impugned order and hence it is the plaintiff-petitioner who ought to cross-examine the DW-Vinod Kumar at the first instance.

Heard.

The dispute in the present case is that the plaintiff-petitioner filed a suit for declaration to the effect that the construction of the building of the newly constructed house of defendant-respondent No.3 in Property

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No.107, Gali No.3, Guru Nanak Nagar, Opposite Sports College, Jalandhar is unauthorised, illegal and against the municipal by-laws. In the said suit, defendant-respondent Nos.1 and 2 are the Municipal Corporation, Jalandhar and the Commissioner, Municipal Corporation, Jalandhar. Defendant-respondent No.3 in the present case is Jatinder Kumar qua whose house the declaration has been sought. The plaintiff-petitioner in the plaint has stated that on numerous occasions complaints were sent to the defendant-respondent Nos.1 and 2 as well as the Deputy Commissioner and the Commissioner of Police. However, no action had been taken qua the unauthorised and illegal construction being raised by defendant-respondent No.3 and hence the plaintiff-petitioner was constrained to file the present suit. The argument raised by the plaintiff-petitioner is that the very foundation of the suit filed by the plaintiff-petitioner was that there has been connivance between the defendant-respondents and now if the plaintiff-petitioner is directed to cross-examine DW-Vinod Kumar at the first instance, any lacunae in the examination-in-chief of DW-Vinod Kumar would be filled in by the co-defendants by asking leading questions which would adversely affect the plaintiff-petitioner and would demolish his case. In the case of **Pritpal Singh Aurora** (*supra*) this Court held as under :

> "*2. The Court, while allowing the application and permitting the legal heirs of the 3rd defendant to adduce evidence, has, in my view, protected the interest of the 2nd defendant by directing that the plaintiff shall first cross-examine and then the 2nd defendant shall have*

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> *the right of cross-examination. No person who is arrayed as a party can ever be denied the right to tender his evidence. The truth or otherwise of the evidence could only be tested in the cross-examination and a party defendant cannot be thrown out at the threshold from offering the evidence which he proposes to tender before the Court. It will be always possible for the 2nd defendant to substantiate his own alleged plea of collusion between the plaintiff and the legal heirs of the 3rd defendant. The 2nd defendant will be entitled to take up all the defences open to him to impeach the value of the evidence proposed to be tendered by the legal heirs of the third defendant."*

In the case of **Mohinder Singh Gill** (*supra*), it has been held as under :

> *"12. In the instant case, it is the admitted position that the first and second defendants sailed together and contested the case of the plaintiff. In other words, there is no adverse interest inter se the defendants. If the second defendant finds that some adverse statement has been given by the first defendant during the course of chief-examination affecting the interest of the second defendant, the second defendant has a right to cross-examine the first defendant. If no adverse statement emerges from the chief examination of the*

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first defendant, no right accrues to the second defendant to cross-examine the first defendant. If the second defendant is permitted to cross-examine the first defendant after the plaintiff cross-examined the first defendant, there is every possibility for the second defendant to derail the fruits of cross-examination done by the plaintiff by putting leading questions to the first defendant and inviting favourable answers.

xxx

16. In the instant case, if we go by the written statement separately filed by the first and second defendants, it is found that they virtually joined together to attack the plea set up by the plaintiff. There is virtually no conflict of interest between the first and second defendant. As such, the second defendant cannot have a right of cross-examination. But, in case, where an adverse statement has been given by the first defendant in his examination-in-chief, the second defendant should be asked to cross-examine the first defendant, if he is so advised, first in time point of time and only thereafter, shall the plaintiff be directed to cross-examine the first defendant in order to ward-off the prejudice that would be caused to any plaintiff.

17. In view of the above, I set aside the impugned order passed by the trial Court and direct the trial

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> *Court to permit the second defendant to cross-examine the first defendant if at all any adverse statement had been made in chief-examination. Thereafter, the plaintiff be permitted to cross-examine the first defendant."*

In the case of **Pritpal Singh Aurora** (*supra*), the plaintiff was directed to cross-examine first in order to protect the interest of the second defendant. In the present case, the interest of the plaintiff-petitioner needs to be protected in as much as the entire case of the plaintiff-petitioner is that there has been connivance between the defendant-respondents. Keeping in view the allegations made in the plaint as well as keeping in view the fact that the interest of the plaintiff-petitioner also needs to be protected, the impugned order dated 28.08.2017 cannot be sustained and is accordingly set aside. Accordingly, DW-Vinod Kumar shall be cross-examined in the first instance by defendant-respondent No.3 and thereafter by the plaintiff-petitioner.

The revision petition is accordingly allowed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

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NOTE:
Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO

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