

**CR No. 995 of 2021 (O&M) and
CR No. 2129 of 2021 (O&M)**

-1-

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

**CR No. 995 of 2021
Date of Decision: January 6, 2022**

Annie Philip Petitioner(s)
Versus

Mohinder Singh Tanwar and others Respondent(s)

CR No. 2129 of 2021

Annie Philip Petitioner(s)
Versus

Mohinder Singh Tanwar and others Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Rishi Pal Singh, Advocate
for the petitioner.

LISA GILL, J.

This order shall dispose of CR-995-2021 and CR-2129-2021.

Petitioner at the first instance filed CR-995-2021 for setting aside order dated 31.03.2021, passed by the learned Additional Civil Judge (Senior Division), Kurukshetra in Civil Suit No.153 of 2020, whereby petitioner's application under Section 151 CPC seeking exemption to appear personally and allowing an authorized person to depose on behalf of the applicant/petitioner/witness on the date fixed, was dismissed.

CR-2129-2021 was subsequently filed by the petitioner primarily challenging order dated 12.03.2021, whereby the petitioner, who is a witness in the suit, it was held, was necessary to be examined and was

therefore, summoned for the next date. The petitioner had filed CR-2129-2021 subsequently after a pointed query by the Court regarding order dated 12.03.2021 as referred to in order dated 31.03.2021 which is the subject matter of challenge in CR-995-2021 as order dated 12.03.2021 was not even appended alongwith CR-995-2021. Order dated 19.07.2021 is also challenged in CR-2129-2021. It is to be noted that two orders dated 19.07.2021 have been attached with CR-2129-2021. Order dated 19.07.2021 attached as Annexure P-2 and marked as the impugned order in the index of said revision petition, has been passed by the learned trial Court disposing of an application dated 13.07.2021 moved by defendant no.3 Harpal Singh Tanwar, arrayed as respondent no.4 in the said revision petition being aggrieved of being summoned as a witness of the plaintiff. Another order dated 19.07.2021 has been attached as Annexure P-4 while deciding an application dated 05.07.2021, filed by the petitioner, whereby she has been exempted from giving her testimony till other witnesses are examined by the plaintiff. Application dated 05.07.2021 had been filed by the petitioner under Section 151 CPC to exempt the applicant/petitioner to appear personally for recording her testimony till final decision of CR-995-2021.

Brief facts necessary for adjudication of both the petitions are that respondent/plaintiff filed a civil suit no.153 of 2020 claiming that he was elected as Manager of the Shiksha Samiti of Maharana Partap Public School, Kurukshetra on 11.12.2019 in a meeting of the governing body of the Kshatriya Sabha Kurukshetra (respondent no.2). It is further pleaded

that due to malafide intention, respondents no.2 and 3 started interfering in the work of Shiksha Samiti and the respondents illegally nominated respondents no.4 and 5 and an illegal Shiksha Samiti was nominated in the place of the duly elected Samiti, as elected on 11.12.2019. Respondent no.2, it is further pleaded sent a communication dated 07.01.2020 to the Principal Maharana Partap Public School that duly elected Shiksha Samiti should not be notified till further orders of the Kshatriya Sabha, as Shiksha Samiti duly elected on 11.09.2019 was legally notified. Various averments have been made in the plaint regarding the illegal nomination of the Shiksha Samiti and that of the plaintiff continuing to discharge his duties as Manager of the Maharana Partap Shiksha Samiti/Maharana Partap Public School. There are averments regarding creation of fabricated and illegal resolutions and of the plaintiff hoisting a flag at the School and delivering a speech on the Republic Day etc. with reference to CCTV footage of the school, details of which are not being reproduced as the same are not necessary for adjudication of the present petition.

Written statement was filed by the defendants. The matter was listed for evidence. Present petitioner who is the Principal of the Maharana Partap Public School was summoned to depose before the learned trial Court on 12.03.2021, however, an application under Section 151 CPC (attached as Annexure P-1 with CR-995-2021) was filed by the petitioner seeking exemption from personal appearance and to allow an authorized person to depose on her behalf.

This application was dismissed by the learned trial Court vide impugned order dated 31.03.2021 (Annexure P-2), while specifically observing that on 12.03.2021, a clerk namely Rajinder Kumar had appeared before the Court on the basis of an authority letter issued by the Principal and a detailed order was passed regarding examination of the Principal in question as a witness in the case and now again the Principal instead of appearing herself has moved an application seeking exemption from recording her testimony. It is further observed that no cogent reason has been mentioned as to why she is unable to record her testimony. Aggrieved from order dated 31.03.2021, CR-995-2021 was filed by the petitioner.

When the matter came up for hearing before this Court on 27.04.2021, following order was passed:-

“This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

Petitioner, in this case, challenges order dated 31.03.2021 whereby her application under Section 151 CPC seeking exemption to appear personally as a witness has been dismissed. In the impugned order, there is a reference to order dated 12.03.2021 passed by the learned trial Court regarding examination of the petitioner as a witness. Said order is not on record and neither has learned counsel for the petitioner produced the same during the course of hearing.

Order dated 12.03.2021 be placed on record before the next date of hearing.

At request, adjourned to 13.05.2021.”

Order dated 12.03.2021 was placed on record by the petitioner and CR-2129-2021 was filed in September, 2021, challenging order dated 12.03.2021 as well as order dated 19.07.2021. Accordingly, both the petitions have been listed and heard together.

Learned counsel for the petitioner vehemently argued that the petitioner has nothing to do with the dispute between respondent no.1 and the Kshatriya Sabha Kurukshetra or the other respondents. Petitioner is merely the Principal of the school in question and by calling the petitioner to depose as a witness, petitioner is being forced to take sides, which is absolutely arbitrary and not conducive for proper running of the institution. Record as available in custody of the petitioner, it is stated, has been made available for perusal of the learned trial Court and the authorized person was duly deputed. Petitioner, it is submitted, should not be compelled to depose in the matter as she specifically does not wish to adduce any evidence in Civil Suit no.153 of 2020. Respondent no.1, it is further submitted, merely wants to harass the petitioner and she should not be compelled to depose as a witness. It is, thus prayed that both the revision petitions be allowed.

I have heard learned counsel for the petitioner at length and have gone through the files.

It is a matter of record that respondent no.1 has filed the suit for declaration with consequential relief of mandatory injunction and permanent injunction with the pleadings as have been briefly reproduced in the

foregoing paras. There are certain specific averments regarding communication to the Principal and attendance in the school etc. in the plaint. Petitioner has been specifically summoned as a witness in Civil Suit No.153 of 2020 by the learned trial Court. Petitioner at the first instance authorised a Clerk to appear on her behalf alongwith the record. Learned trial Court vide order dated 12.03.2021 categorically directed the Principal/petitioner to remain present for her deposition. In the application filed by the petitioner under Section 151 CPC, seeking exemption from her personal appearance for deposition, it is mentioned that she is not a party in any case of the Kshatriya Sabha and has not recommended or rejected the petitioner's name in any election and that entire record of election dated 11.12.2019 is in the custody of Secretary of the said Sabha and moreover, it is stated that petitioner being Principal of the School is busy in interviews of the new staff, new admissions, preparation of results and time table etc. and therefore, unable to appear before the Court. Learned counsel for the petitioner has time and again during arguments raised a bogey that in case petitioner testifies, she will be forced to take a particular side, which would be detrimental for the functioning of the School.

Learned counsel is, however, unable to point out any provision of law, which entitles a witness to refuse to appear before the Court for testifying on such grounds, once learned trial Court has summoned the petitioner to depose as a witness. Learned counsel for the petitioner has also referred to the Haryana School Education Rules, 2003, to point out the

functions and the duties of a Principal and conditions of service of the Principal, but is again unable to refer to any specific Rule, which entitles the petitioner for exemption from deposing before the learned trial Court. In case, the learned trial Court keeping in view the facts and circumstances of the case has found examination of the petitioner to be necessary for the just and proper adjudication of the *lis* in hand and has summoned the petitioner, there is indeed no justification available on record to set aside the said orders. The bald assertion of the petitioner that she does not wish to adduce evidence in Civil Suit No. 153 of 2020 can definitely not be the reason to allow the present revision petitions.

In respect to order dated 19.07.2021 (Annexure P-2) indicated as one of the impugned order in CR-2129-2021, it is to be noticed that the present petitioner is not concerned with the matter at all inasmuch as learned trial Court has disposed of an application filed by defendant no.3, arrayed as respondent no.4 with a prayer that he should not be examined as a witness of the plaintiff as it would amount to compelling the said defendant to depose against himself. Learned trial Court has disposed of the said application while observing that said defendant no.3 cannot be compelled to appear as a witness of the plaintiff and if the plaintiff required production of any document, he can summon and authorise some person to produce the same from the office of the defendant. Learned trial Court has, however, held that objection regarding examination of the witness PW Sham Singh was untenable, as the case of witness Sham Singh was on a different footing than

Harpal Singh Tanwar. Learned counsel for the petitioner is unable to point out as to how the petitioner is aggrieved by this order and what is the infirmity or irregularity in the same. A parallel had been sought to be drawn that if Harpal Singh Tanwar can be exempted from appearing personally so can the petitioner. Clearly this argument is devoid of any merit keeping in view the fact that the petitioner is not arrayed as a party in the suit and there is no question of the petitioner being compelled to depose against herself. In so far as order dated 19.07.2021 attached as Annexure P-4 is concerned, learned trial court has already afforded the relief of exempting the petitioner from recording her testimony till the other witnesses are examined by the plaintiff. I find no ground whatsoever to interfere in the said impugned order as well.

No other argument has been addressed.

Accordingly, finding no merit in these revision petitions, both are dismissed with no order as to costs.

January 6 , 2022
Sunil

(Lisa Gill)
Judge

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