

CR-1439-2018 (O&M)

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

Sr. No.106

**CR-1439-2018 (O&M)
Date of Decision: 16.05.2023**

PRANAV SHEFALI TRUST AND OTHERS

....Petitioners

Versus

KAPIL BAJAJ AND OTHERS

..... Respondents

CORAM: HON'BLE MRS JUSTICE ARCHANA PURI

Present:- Mr. Puneet Sharma, Advocate,
for the petitioners.

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

Mr. Brahmjot Singh Nahar, Advocate,
for respondent No.2.

ARCHANA PURI, J. (ORAL)

Challenge in the present revision petition is the order dated 05.07.2017 (Annexure P-12) passed by learned Lower Court on the application filed by the contesting respondents No.1 and 2/defendants No.3 and 4, for seeking permission to cross-examine the witness Dr. J.S. Mathur, through Local Commissioner and also the order dated 13.11.2017 (Annexure P-15) passed by learned Lower Court on the application for modification of the order dated 05.07.2017.

During the pendency of the suit filed at the instance of petitioners/plaintiffs, when the case was fixed for plaintiff evidence, an order (Annexure P-5) was passed on the application for appointment of Local Commissioner to examine Dr. J.S. Mathur, who was witness to the

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disputed Will dated 06.01.1981, at Delhi. Thereupon, vide order dated 15.04.2017, Shri Piyush Rohilla, Advocate, was appointed as Local Commissioner to examine the said witness. The examination was to be conducted on 01.05.2017. However, it is further coming forth that on the requisite date, the contesting respondents/defendants did not make appearance and examination-in-chief of the witness, Dr. J.S. Mathur, was conducted by the Local Commissioner and thereafter, report was filed before learned Lower Court, copy whereof is Annexure P-7.

Since the cross-examination of the aforesaid witness was treated as '*Nil*', an application for permission to cross-examine the witness, Dr. J.S. Mathur, was again filed at the behest of contesting respondents/contesting defendants. After seeking reply of the said application, vide impugned order dated 05.07.2017, while considering various circumstances and also the facts of the case, the said application was partly allowed to the effect that the petitioners/plaintiffs to produce the witness, Dr. J.S. Mathur, on the next date of hearing, for his cross-examination by the contesting respondents/contesting defendants.

However, feeling aggrieved by the aforesaid order, an application for modification of the requisite order was filed and the same was dismissed vide order dated 13.11.2017, thereby observing that the contesting respondents/contesting defendants can assert their right of appeal/revision, before the appropriate appellate authority. Copy of the said order has been placed on record as Annexure P-15.

At this juncture, it is pertinent to mention here that feeling aggrieved by the appointment of the Local Commissioner, vide order

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dated 15.04.2017, copy whereof is Annexure P-5, CR-3395-2017 was filed by the respondent(s)/defendant(s) and the same was disposed of vide order dated 11.05.2017, copy whereof is Annexure P-8. Vide the said order, though, no relief, as such, was granted to the respondent/defendant-Praveen Mittal, *vis-a-vis* conducting of the cross-examination, but however, in view of the contents of the order, so passed by this Court, the order for appointment of Local Commissioner, as such, was kept intact, whereas, the option was given, while observing that if cross-examination is necessary, the respondent/defendant-Praveen Mittal should be at liberty to move an application before learned Lower Court.

It is, in this context, the applications (Annexures P-9 and P-10) were filed, upon which an order dated 05.07.2017 was passed. In the given circumstances, when the order of appointment of the Local Commissioner, as such, has been kept intact by this Court, it was not within the power of learned Lower Court to modify the order and further, direct the witness, Dr. J.S. Mathur, to be produced in the Court, for conducting of his cross-examination.

In the given circumstances, the impugned order dated 05.07.2017 (Annexure P-12) is hereby set aside, to the extent of the witness, Dr. J.S. Mathur, to be produced before learned Lower Court, for his cross-examination. Further, in consonance with the order dated 15.04.2017 (Annexure P-5), the cross-examination of the said witness, be conducted by way of appointing Local Commissioner.

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Earlier, vide order dated 15.04.2017, Shri Piyush Rohilla, Advocate, was appointed as Local Commissioner. In the light of the same, today learned counsel for the parties have given statement that they have no objection if the Local Commissioner previously appointed, is again appointed for the purposes of conducting the cross-examination of the witness, Dr. J.S. Mathur.

In the given circumstances, when counsel for the parties are not raising any objection to the examination-in-chief, already recorded through Local Commissioner, learned Lower Court has the option to appoint the same Advocate as Local Commissioner, for conducting the cross-examination of the witness, Dr. J.S. Mathur.

However, if due to certain constrained circumstances, the same Advocate, could not be appointed as Local Commissioner, learned Lower Court has the option of appointing any other Advocate as Local Commissioner to facilitate conducting of the cross-examination of witness, Dr. J.S. Mathur, in consonance with the order dated 15.04.2017 (Annexure P-5).

In view of the aforesaid terms, the present revision stands disposed of.

16.05.2023
Himanshu

(ARCHANA PURI)
JUDGE

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