

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-384-2023 (O&M)

Date of decision: January 20, 2023

Gurdial Singh

...Petitioner

versus

Roop Lal @ Rajveer Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Sarju Puri, Advocate for the petitioner.

ARUN MONGA, J. (ORAL)

Petition herein, under Article 227 of Constitution of India, is for setting aside impugned order dated 02.01.2023 (Annexure P-1) passed by learned Civil Judge (Senior Division), SBS Nagar, whereby in a suit for specific performance of agreement to sell instituted by petitioner-plaintiff, application of defendant-respondent seeking permission to record evidence of defendant through video-conferencing, was allowed.

2. I have heard learned counsel for the petitioner and gone through the case file.

3. Impugned order is premised, *inter alia*, on the following reasoning:

“6. The plea of the Ld. counsel for the respondent/plaintiff is that previously also the applicant/defendant filed the application which was dismissed and there is no change of circumstances and the present application is not maintainable but this court is of the view that the said contention of the Ld. counsel for the respondent/plaintiff is not tenable because the first application was moved during pandemic period and it was dismissed vide order dated 05.09.2022 holding that as there is no such situation of pandemic

on the date of decision and there is no restraint of flights to foreign country.

7. *The present application has been filed by the defendant on the ground that the defendant is unable to travel to India due to his professional constraints for his evidence in this case. Admittedly the defendant is residing in United Kingdom and the witness is residing beyond the jurisdiction of this court. So due to his professional constraint she is not able to travel to India. So the present application has been moved under changed circumstances on the ground that defendant could not travel to India due to his professional constraint. The Hon'ble Supreme Court of India has already framed the Model Rules of Video Conferencing for recording the evidence by way of Video Conferencing. The Chapter II clause 3 of said Model Rules provides General Principle governing video conferencing as follows:-*

General principles Governing Video Conferencing:

- (i) Video Conferencing facilities may be used at all stages of judicial proceedings and proceedings conducted by the Court.*
- (ii) All proceedings conducted a Court by way of video conferencing shall be judicial proceedings and all the courtesies and protocols applicable to a physical Court shall apply to these virtual proceedings. The protocol provided in Schedule I shall be adhered to for proceedings conducted by way of Video Conferencing.*
- (iii) All relevant statutory provisions applicable to judicial proceedings including provisions of the CPC, Cr PC, Contempt of Courts Act, 1971, Indian Evidence Act, 1872 (abbreviated hereafter as the Evidence Act), and Information Technology Act, 2000(abbreviated hereafter as the IT Act), shall apply to proceedings conducted by video conferencing.*
- (iv) Subject to maintaining independence, impartiality and credibility of judicial proceedings, and subject to such directions as the High Court may issue, Courts may adopt such technological advances as may become available from time to time.*
- (v) The Rules as applicable to a Court shall mutatis mutandis apply to a Commissioner appointed by the Court to record evidence and to an inquiry officer conducting an inquiry.*
- (vi) There shall be no unauthorized recording of the proceedings by any person or entity.*
- (vii) The person defined in Rule 2 (xii) shall provide identity proof as recognized by the Government of India/State Government/Union Territory to the Court point coordinator via personal email. In case identity proof is not readily available the person concerned-shall furnish the following personal details; name, parentage and permanent address, as also, temporary address if any. So in view of above Model Rules for evidence of witness could be recorded through V.C.*

8. *The further plea of Ld. counsel for the plaintiff/respondent is that certain documents are to be put to the defendant, so examination of the defendant is very essential. I have heard the said submission of Ld. counsel for the plaintiff. In this regard the procedure has been prescribed under the Model Rules of Video Conferencing in clause No.8.4 of Rule No.8 i.e. Examination of witness. Clause 8.4. provides as follows:-*

“Subject to the provisions for examination of witnesses contained in the Evidence Act, before the examination of the witness, the documents, if any, sought to be relied upon shall be transmitted by the applicant to the witness, so that the witness acquires familiarity with the said documents. The applicant will file an acknowledgment with the Court in this behalf.”

So in view of these circumstances if Ld. counsel for the plaintiff wants to put any document to the witness, in that circumstances, the photocopy of the same will be supplied to the opposite party in advance and the same can be sent to the witness, in advance, so that he may answer on the said document.

9. *So there are sufficient grounds to record the statement of witness Roop Lal @ Rajvir Singh through VC. So in view of these circumstances present application is allowed. Letter be written to the Embassy at United Kingdom through Ministry of Law & Justice through e-mail with the request to arrange the process of recording the statement of the witness Roop Lal @ Rajvir Singh at the earliest.*

10. *The Witness Roop Lal @ Rajvir Singh is also directed to approach the Indian High Commission/Embassy in United Kingdom and get the statement recorded in the Court on 09.01.2023.”*

4. Having heard the arguments of learned counsel for petitioner, there is no room for interference in the aforesaid valid reasons recorded by the Court below. The contentions raised by the petitioner seem to have been rightly repelled by the learned Trial Court.

5. No material irregularity in law or procedure has been committed by the learned Court below, so as to exercise extraordinary revisional jurisdiction herein.

5.1 However, non-interference by this Court in the order impugned herein would not be construed to mean that in case, the trial Court, in course of examination through video-conferencing finds that the witness to be

examined is taking advantage of video-conferencing by being evasive or otherwise; or his demeanour is not to the satisfaction of the trial Court, in that eventuality, it shall be open to the trial Court to pass further appropriate orders requiring personal appearance of the said witness.

- 6. In the premise, revision petition is disposed of, accordingly.
- 7. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

January 20, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No