

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

CR No. 5649 of 2017

DATE OF DECISION :- April 11, 2023

Surender Kumar

...Petitioner

Versus

Arya Education Society and others

...Respondents

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN

Present:- Mr. Harsh Aggarwal, Advocate for the petitioner.

Mr. Mukesh Kumar Verma, Advocate for respondent No. 1.

1. Under challenge in this revision petition is the order dated 2.8.2017 passed by Civil Judge (Junior Division), Rewari in civil suit titled 'Arya Education Society, Narayanpur, Tehsil and District Rewari, versus Dharam Chand and others' pending in that Court vide which permission for recalling PW3 Sarita for further cross-examination has been declined. This revision petition has been filed by one of the defendant in the civil suit namely Surender Kumar.

2. Briefly stated the facts of the case are that during the course of proceedings before the trial Court, defendant No. 2 Surinder Kumar had filed an application under Order 18 Rule 17 read with Section 151CPC for permission to recall the witness PW3 Sarita Saini (Principal of S.T. Convent School) for her further cross-examination with regard to the hand writing of resolution Ex.P1 and resignations Ex.P8 to Ex.P10. It was further prayed

that while recalling PW3 Sarita Saini she should be directed to bring with her other documents written by her in her hand writing in Hindi and English language. Inter alia in the application it was contended that when Smt. Sarita Saini got her statement recorded as PW3 during her cross-examination she has accepted that she does not know in whose hand writing is body writing Mark 'C' Ex. P7. Whereas PW 1 Yogesh during his cross-examination has stated that resolution copy Ex.P1 is in handwriting of School Principal Smt. Sarita Saini, therefore, it has become necessary to get the comparison of hand writing of the body of resolution Ex.P1 as well as Mark-E and Mark-C of receipts Ex.P6 and Ex.P7, therefore, such application be accepted.

3. The application was opposed by the plaintiff. The trial Court vide impugned order dated 2.8.2017 had dismissed the application. The operative part of the order contained in para No. 5 is being reproduced for ready reference :-

“Having heard the arguments and perusal of the case file goes to show that for further cross-examination of PW3 Sarita Devi qua her hand writing and body writing over resolution Ex.P1 and resignation Ex.P8 to Ex.P10 and for giving further direction to bring her other document and writing this application filed by defendant no. 2. PW3 has already been cross-examined by the plaintiff. Said document which he wants to put to the witness were already within his knowledge and against specific question, she already denied her hand writing over receipts Ex.P1 and Ex.P7 at Mark-E and Mark-C. Party must have to stand on his own legs to prove his stand. PW3 is not party in this suit, she is witness where sufficient opportunity was given to defendant; therefore, just to bring more document of her writing so that defendant may examine the same from expert to contradict with disputed resolution or receipt bearing admitted signature of defendant Surender, who is legally educated and working as teacher, is not necessary for just and proper decision of the case. No party is allowed to take

advantage of his own wrong and cannot allow to filling his lacuna. For putting material question, witness cannot allow to be recalled (See. Birander Singh vs. Babu Ram 2007(#) CCC 620 (P&H). Serious prejudice will cause to the rights of the plaintiff if application allowed. Hence, application stands to be dismissed with liberty to get hand writing expert opinion/report at his own responsibility.”

4. Feeling aggrieved defendant No. 2 has filed a revision petition before this Court. Notice of the revision petition was given to respondent plaintiff who has put in appearance through counsel.

5. I have learned counsel for the parties besides going through record.

6. I find that the application was rightly rejected by the trial Court. Once PW3 Sarita Saini during her cross-examination had denied that the disputed hand writing is of her, there is no question of recalling her along with documents to face further cross-examination. The defendant is to prove his version by bringing evidence and he cannot seek recall of PW3 Sarita Saini for such as purpose. I do not find any illegality or infirmity in the order. That order does not have any element of arbitrariness or perversity. No interference of this Court with the impugned order while exercising revisional jurisdiction is called for.

7. Learned counsel for the revision petitioner has referred to judgments of the Apex Court titled 'Ram Rati versus Mange Ram (D) Thr Lrs & Ors.' passed in Civil Appeal No. 1684 of 2016 and 'Sameer Suresh Gupta Thorough Pa Hoder versus Rahul Kumar Agarwal' passed in Civil Appeal No. 2218 of 2013 and another judgment of this Court titled 'Suresh Kumar Yadav and another versus Seema Yadav' passed in CR-3260-2019 (O&M). Those judgments are not helpful to him due to different facts and

circumstances. The trial Court was justified in dismissing the application
The revision petition is found to be without any merit and is dismissed
accordingly. Nothing discussed above shall constitute any opinion on the
merits of the case. The interim order passed on 24.8.2017 directing the trial
Court to adjourn the proceedings beyond the date fixed in this Court thus
comes to an end.

(H.S. MADAAN)
JUDGE

April 11, 2023
p.singh

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No