

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

CR-2317-2023(O&M)

Date of decision:-19.4.2023

Jagvinder Singh @ Jagvinder and others

...Petitioners

Versus

Rai Singh and others

...Respondents

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

Present: Mr.Abhilaksh Grover, Advocate with
Ms.Nandini Gupta, Advocate for
for the petitioners.

H.S. MADAAN, J.

1. Under challenge in this revision petition is the order dated 3.3.2023 passed by Additional Civil Judge (Sr.Divn.), Pataudi in civil suit titled 'Rai Singh Versus Jagvinder etc.' vide which an application filed by defendant No.11A Balbir Singh seeking permission of the Court to examine defendant No.7 Dayawanti as a witness on his behalf had been allowed.

2. Briefly stated, facts of the case are that in the civil suit in question initially Dayawanti impleaded as defendant No.7 had been proceeded against ex-parte vide order dated 2.5.2014 since she she had not appeared in the Court despite due service; subsequently, she filed an

application and vide order dated 24.1.2023, she was allowed to join proceedings; defendant No.11A Balbir Singh had filed an application that Dayawanti wanted to appear as a witness in favour of such defendant as per his claim and she be permitted to do so.

3. Such application was opposed by defendants No.1 to 5 contending that defendant No.7 had not filed her own written statement, therefore, she could not be allowed to lead evidence and Dayawanti could not be allowed to appear as a witness either in favour or against the other parties.

4. That application was allowed by the trial Court of Additional Civil Judge(Sr.Divn.), Pataudi vide the impugned order dated 3.3.2023. For ready reference, the operative part of the order is being read as under:

4. Heard. Herein, in this case earlier defendant No. 7 Dayawanti was proceeded ex-parte vod 02.05.2014. Later on merits the Court vide its order dt. 24.01.2023, on her application, she was allowed to join the proceedings of the case thereon. Hence, Dayawanti is now appearing in this case from the date of the order of joining proceedings though she was not given the right to turn back the case proceedings from the date when she was proceeded ex-parte. So, she (Dayawanti-defendant no. 7) now joined the proceedings of this case as and when it was ordered. The case is already fixed for defendant evidence and if defendant No. 11-A wants to examine Dayawanti as a witness on the basis of their own written statement, which is already on the file as a witness in the Court, then this will not cause prejudice to the right of the

respondent or the other parties. Moreover, the application for examining Dayawanti as a witness is not objected to by the Ld. counsel for the plaintiff in any manner and he even endorsed his no objection on the same. There is no counter-claim of defendants No. 1 to 5 against the other defendants or the plaintiff or defendant no. 7. Hence, examination of Dayawanti as a witness in the Court will not prejudiced the rights of the respondents/defendants No. 1 to 5 in any manner as they will get due opportunity to cross examine the witness on the basis of her examination-in-chief, as applicable and as per law.

5. Therefore, in view of the above observation and discussion the application in hand for allowing the application to examine the witness Dayawanti in his evidence, filed by defendant No. 11-A stands allowed.

5. Such order left the defendants No.1 to 5 aggrieved and they have approached this Court by way of filing the present revision petition.

6. I have heard learned counsel for the petitioners besides going through the record and I find that there is absolutely no merit in the revision petition.

7. The submission made by learned counsel for the revision petitioners is that since defendant No.7 had been proceeded against ex-parte and she had not filed any written statement and further she was allowed to join the proceedings from the stage of evidence of defendant, therefore, she could not be allowed to appear as a witness in the civil suit.

He has referred to judgment *Shri Labh Chand Jain Versus Shri Sughan Chand Jain & Ors.* passed by Delhi High Court in Review Petition No.475 of 2009 and IA 15754 of 2009 in CS(OS) 2214 of 1988 in support of that contention.

8. I find that there is no force in such submissions made by learned counsel for the revision petitioners and the judgment referred to by him does not come to his rescue due to different facts and circumstances and the context in which such observations had been made. Here defendant No.11-A wants to examine defendant No.7 as a witness on his behalf. The case is at the stage of defendants evidence. There is certainly no bar to a defendant examining a co-defendant as a witness on his behalf. Things might have been different if defendant No.7 had sought permission to get her statement recorded as a witness for herself, then she might not have been allowed to do so for the reason that she had not filed any written statement, she could not possibly depose without her pleadings being there.

9. But here the situation is quite different. There is no question of any lacuna in the case of defendant No.11-A being filled by grant of permission to him to examine defendant No.7 as a witness on his behalf. It is difficult to understand as to why the revision petitioners, who are defendant No.1 to 5 are feeling very apprehensive with regard to recording deposition of defendant No.7. They would get an opportunity to cross-examine her but they can certainly not block her appearance as a witness for defendant No.11-A. The whole approach of the revision petitioners is misconceived and there is absolutely no merit in the revision

petition.

10. The impugned order passed by the trial Court is quite detailed and well reasoned and it does not suffer from any illegality or infirmity and is not having any element of arbitrariness or perversity. The revisional jurisdiction of this Court is quite limited and considering the facts and circumstances of the case, there is no reason to interfere with the impugned order by way of exercising the revisional jurisdiction.

11. Finding no merit in the revision petition, the same stands dismissed.

Since the main revision petition has been dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

19.4.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No