

CR-3910-2019

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CR-3910-2019

Date of decision: 21.09.2023

Gurbhag Singh

....Petitioner

Versus

Rameshwar Singh

...Respondent

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Amit Jain, Senior Advocate with
Mr. Anupam Mathur, Advocate for the petitioner.

Ms. Sarika Gupta, Advocate for the respondent.

AMARJOT BHATTI, J.

1. The petitioner-Gurbhag Singh has filed the present civil revision under Article 227 of the Constitution of India with the prayer to set aside the impugned order dated 13.05.2019 passed by learned Civil Judge (Junior Division), Mohali with further direction to the trial Court to proceed in the matter as per law.

2. Learned counsel for the petitioner pointed out that he had filed application to exclude affidavit and evidence of PW1-Inderjit Singh, affidavit and evidence of PW4, evidence of PW3 Magwinder Singh and the documents exhibited as PW6/A to PW6/F in the evidence of Kanwar Mubarak Singh. It is pointed out that Inderjit Singh PW1 filed his affidavit dated 28.07.2011 (Ex.PW2/A) tendered on 13.12.2013. He again placed on record another affidavit dated 20.02.2014 and he again tendered another affidavit dated 27.10.2014 (Ex.PW4/A) on 20.10.2014. The plaintiff could not tender affidavit of Inderjit Singh thrice. His

examination-in-chief was recorded on 13.12.2013 and he was not cross-examined. He cannot be examined-in-chief again as PW2 and his affidavit Ex.PW4/A cannot be tendered. When the first affidavit tendered by Inderjit Singh PW1, he was not examined now the evidence of PW4 cannot be taken on record and it should be excluded. Furthermore, Magwinder Singh PW3 tendered his affidavit, it was not recorded on solemn affirmation. No oath was administered to him, therefore his statement is also liable to be excluded. Kanwar Mubarak Singh PW6 appeared as witness but his statement was not signed by the then Civil Judge nor the documents Ex.PW6/A to PW6/D bears the certificate of the learned Judge nor bears the signatures. Therefore, the same cannot be taken on record. In this regard application Annexure P1 was filed. It was contested by the other party by filing reply Annexure P2. The said application was wrongly declined by passing impugned order dated 13.05.2019 which is Annexure P-3. The learned trial Court wrongly held that the present petitioner has not suffered any prejudice. The proceedings were not conducted as per the established procedure and the provisions of CPC. Therefore, the present petition may kindly be allowed and impugned order dated 13.05.2019 passed by learned Civil Judge (Junior Division), Mohali may kindly be set aside and the said Court may be directed to proceed as per law.

3. Learned counsel for the respondent in her brief arguments pointed out that the application filed by the present petitioner before the trial Court for excluding the evidence of Inderjit Singh PW1 and affidavit and evidence of PW4, statement of Magwinder Singh PW3 as well as the documents proved on record by Kanwar Mubarak Singh PW6 as PW6/A to

PW5/F without any basis. The case is fixed for defence evidence and at that belated stage the application has been filed only to delay the proceedings of the case. The impugned order dated 13.05.2019 passed by learned Civil Judge (Junior Division), Mohali is fully justified and all the aspects of the present case have been dealt with. The present petitioner has not suffered any prejudice at the relevant time. No objection was raised regarding the statement of Inderjit Singh recorded as PW4 nor any objection was raised when the testimony of Magwinder Singh PW3 was recorded. Mere non signing of exhibits by the trial Court does not mean that the said documents were not proved on record and the same are to be taken off the record. The petition filed by the petitioner is without merits and the same may kindly be dismissed.

4. I have considered the arguments and have gone thorough the record. Firstly I will deal with the statement of Inderjit Singh recorded as PW1/PW4. It is not disputed that initially Inderjit Singh tendered his affidavit dated 28.07.2011 in the Court on 13.12.2013 and on this date the witness was not cross-examined. Thereafter another affidavit dated 20.02.2014 was placed on record and the same witness was ultimately examined as PW4 who again tendered his affidavit on record on 27.10.2014 and the witness was cross-examined. Now subsequently the present petitioner filed application Annexure P-1 to exclude the statement of Inderjit Singh recorded as PW4 as well as second affidavit dated 20.02.2014. The aforesaid factual position clearly indicates that the counsel for plaintiff tendered affidavit of Inderjit Singh as PW1. Another affidavit dated 20.02.2014 was placed on record and thereafter again tendered affidavit dated 27.10.2014 of same witness as PW4. There is

lapse on the part of learned counsel for the plaintiff for tendering the affidavit of same witness thrice. Some lapse is also there on the part of learned Presiding Officer who due to oversight did not notice that the affidavit of same witness was being tendered time and again and finally the lapse is also on the part of counsel for the defendant i.e. the present petitioner who did not object regarding the tender of affidavit of Inderjit Singh as referred above. Rather when the affidavit of Inderjit Singh was tendered as PW4/A dated 27.10.2014. He was also cross examined. The statement of the witness is to be recorded under Order 18 Rule 4 CPC. *A party can always withdraw affidavit at any time prior to the commencement of cross-examination of the witness without any adverse inference and can file supplementary affidavit with the permission of the Court.* In the case in hand the only lapse on the part of plaintiff/respondent was that no permission was sought from the Court while tendering of affidavit as PW4. It is also rightly pointed out by the learned Civil Judge (Junior Division) Mohali by passing impugned order dated 13.05.2019 that the present petitioner/defendant has not suffered any prejudice as he is given full opportunity to cross-examine the witness. Considering the aforesaid facts, I do not find any reason to exclude the affidavit of Inderjit Singh dated 20.02.2014 as the same was not tendered into evidence nor any cross was conducted on affidavit dated 28.07.2011. The complete statement of Inderjit Singh is as PW-4.

5. The learned counsel for the petitioner, further pointed out that when the statement of Magwinder Singh PW3 was recorded he was not administered oath and secondly when the statement of Kanwar Mubarak Singh PW6 was recorded the said statement was not signed by the learned

Presiding Officer and the documents exhibited by him were also not signed by the learned Presiding Officer.

I have considered this aspect of the present case, the learned trial Court has rightly relied upon the provision of Section 114 of the Indian Evidence Act, 1872 which provides that “*The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.*” As as per Clause (e) of Section 114 of Act *ibid* “*the judicial and official acts have been regularly performed.*” Therefore, in case any document was left to be signed by the then Presiding Officer, it can be signed by the subsequent Presiding Officer. Moreover, the document is exhibited on the basis of the statement of a witness recorded in the Court and no adverse inference can be drawn if any statement or exhibited document was left to be signed by the then Presiding Officer.

Therefore, in my opinion, I do not find any reason to interfere in the impugned order dated 13.05.2019 passed by learned Civil Judge (Junior Division) Mohali and the same is accordingly upheld and the present civil revision stands declined.

21.9.2023
Sunil Devi

(AMARJOT BHATTI)
JUDGE

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