

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.3718 of 2023

Date of Decision : 14.07.2023

Kumari Neha Jain

..... Petitioner

Versus

Anil Kumar Jain and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Mr. Sanjeev Sharma, Advocate
for the petitioner.

VIKRAM AGGARWAL, J (ORAL)

1. The present revision petition preferred under Article 227 of the Constitution of India assails the order dated 08.05.2023 (Annexure P-1), passed by the Addl. Civil Judge (Senior Division), Rohtak, vide which the evidence of the petitioner was closed by the orders of the Court. The petition further assails the order dated 17.04.2023 (Annexure P-2) to the extent that it mandates that the examination of the witness will be guided only by Rule 5.1 read with Rule 5.2 and 5.3.1 of the Video Conferencing Rules (for short 'the Rules'), issued by the Punjab & Haryana High Court.

2. The facts, in brief, are that the petitioner-plaintiff filed a suit in the year 2015 (Annexure P-3) for partition of property No.110/20, DLF Colony, Rohtak by metes and bounds. An injunction restraining the respondents-defendants from interrupting the petitioner-plaintiff from raising four walls in her portion of the property in question was also sought. Since the father of the

petitioner-plaintiff namely Atul Kumar Jain was a resident of United Kingdom, an

application dated 06.10.2022 (Annexure P-4) was moved by the petitioner-plaintiff seeking permission to examine him through video conferencing. The same was opposed by way of a reply dated 20.10.2022 (Annexure P-5). Vide order dated 11.01.2023 (Annexure P-6), passed by the Addl. Civil Judge (Senior Division), Rohtak, the said application was allowed and permission was granted to examine Sh. Atul Kumar Jain through video conferencing facility as per the procedure prescribed by law. Subsequently, an application dated 23.02.2023 (Annexure P-7) was moved by respondent No.1-defendant No.1 that the Rules laid down by the High Court had not been followed. This application was opposed by the petitioner-plaintiff by way of a reply dated 24.02.2023 (Annexure P-8). Vide order dated 17.04.2023 (Annexure P-2), the trial Court disposed of the said application (Annexure P-7) and directed the petitioner-plaintiff to produce PW Atul Kumar Jain as per the procedure laid down in Rule 5 of the Rules at his own expense. Since the witness was not produced, vide order dated 08.05.2023 (Annexure P-1), the evidence of the petitioner-plaintiff was closed, leading to the filing of the present revision petition.

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

4. Since the decision of the revision petition will not affect the rights of the respondents-defendants, notice is not being issued to the respondents-defendants.

5. Learned counsel for the petitioner has submitted that the trial Court gravely erred in closing the evidence of the petitioner. It has been submitted that Rules 5.1, 5.2 and 5.3 of the Rules would not be applicable in Civil Cases. It has further been contended that even if these Rules are applicable, it would not be possible for the petitioner to get a Coordinator appointed at the remote point since

the witness is based in the United Kingdom unless and until a direction in this regard is issued by the trial Court. Learned counsel has infact, during the course of arguments, submitted that he would examine the witness Atul Kumar Jain by way of video conferencing as per the Rules laid down by the High Court provided a direction is given by the Court to appoint a Coordinator at the remote point. In support of his contentions, learned counsel has placed reliance upon the judgments of Coordinate Benches of this Court in *Sucha Singh versus Ajmer Singh and another 2018 (3) R.C.R.(Civil) 327, Sumati Gulhati versus Prateek Bajaj 2021 (3) R.C.R.(Civil) 383 and Sat Pal Dhawan and another versus Davinder Singh Aulakh and others 2017 (1) Civ.C.C.681.*

6. I have considered the submissions made by learned counsel for the petitioner.

7. “The Rules for video conferencing for Courts” were notified by the High Court on 10.12.2021. Rule 2(iii) defines ‘Coordinator’, Rule 2(v) defines ‘Court Point’ and Rule 2(x) defines ‘Remote Point’. They lay down as under:-

“Rule 2(iii)

“Coordinator” means a person nominated as coordinator under Rule 5.

Rule 2(v)

“Court Point” means the Courtroom or one or more places where the Court is physically convened, or the place where a Commissioner or an inquiring officer holds proceedings pursuant to the directions of the Court.

Rule 2(x)

“Remote Point” is a place where any person or persons are required to be present or appear through a video link.”

Rule 3(i) of the Rules lays down that video conferencing facilities may be used at all stages of judicial proceedings and proceedings conducted by the Court.

Rule 5 of the Rules deals with 'preparatory arrangements'. Rules 5.1 and 5.2 of the Rules lay down as under:-

“5.1 There shall be a Coordinator both at the Court Point and at the Remote Point from which any required person is to be examined or heard. However, Coordinator may be required at the Remote Point only when a witness or a person accused of an offence is to be examined.

5.2 In the civil and criminal Courts falling within the purview of the district judiciary, persons nominated by the High Court or by the concerned District Judge, shall perform the functions of Coordinator(s) at the Court Point as well as the Remote Point as provided in Rule 5.3.

Rule 5.3.1 of the Rules lays down that a Coordinator at the Remote Point when the required person is overseas, would be an official of an Indian Consulate/the relevant Indian Embassy/the relevant High Commission of India.

8. It is, therefore, clear that for examination of Sh. Atul Kumar Jain by way of video conferencing, there would have to be a Coordinator both at the Court point as also at the remote point. The argument that the Rules would not be applicable to civil proceedings is devoid of merit as these Rules deal with both civil and criminal proceedings as is clear from Rule 3 (i) of the Rules as it does not create any distinction between civil and criminal proceedings. It is, therefore, clear that there is no illegality in the observation of the trial Court that the witness would have to be examined in terms of the said provision. However, I find merit in the argument advanced by learned counsel for the petitioner that he would not be in a position to get a Coordinator at the remote point appointed without a

direction of the Court. The evidence of the petitioner was closed by the Court vide order dated 08.05.2023 (Annexure P-1) since the petitioner could not produce the evidence. There is no illegality in the order. However, it is well settled that matters should normally be decided on merits and parties should not be non-suited on technicalities. This Court, therefore, deems it appropriate to grant one more opportunity to the petitioner to examine the witness namely Atul Kumar Jain.

In view of the above, the present petition is disposed of. The order dated 08.05.2023 (Annexure P-1) is set aside to the extent that it closed the evidence of the petitioner. The order dated 17.04.2023 (Annexure P-2) is, however, upheld. A direction is issued to the trial Court to give one opportunity to the petitioner to examine her witness namely Atul Kumar Jain by way of video conferencing as per the Rules laid down by this Court for the same. The trial Court would also give a direction in its order regarding appointment of a Coordinator at the remote point in accordance with the rules so that the petitioner is in a position to pursue his matter with the concerned consulate/embassy/High Commission.

The judgments relied upon by learned counsel for the petitioner need no reference in view of the aforesaid directions.

The petition is disposed of accordingly.

(VIKRAM AGGARWAL)
JUDGE

14.07.2023
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No