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

**C.R NO. 2274 OF 2021 (O&M)
DATE OF DECISION: 08.02.2023**

Surjeet Kaur

...Petitioner

Versus

Surjeet Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Hardip Singh, Advocate and
Mr. Amit Bansal, Advocate,
For the petitioner.

Mr. Arvinder Arora, Advocate
For respondent No.1.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside order dated 07.09.2021 (Annexure P-7) passed by learned trial Court below, whereby application of petitioner/defendant No.1 under Order XVIII Rule 3A CPC for rejection of examination-in-chief of respondent No.1/plaintiff (PW3), was dismissed.

2. Brief factual recitals, as pleaded in the petition, are that respondent No.1/plaintiff filed a suit for possession by specific performance of agreement to sell dated 02.01.2010 executed by defendant No.1 in favour of plaintiff in respect of land measuring 29 Kanals 8 Marlas. Petitioner filed written statement (Annexure P-2) stating that she was neither owner in possession of land in question at the time of execution of alleged agreement to sell nor she ever received any earnest

money of Rs.9,00,000/-. No replication was filed and issues were framed. Plaintiff tendered his evidence by way of affidavit on 23.08.2021 without taking prior permission from the Court, as prescribed under Order XVIII Rule 3A CPC.

2.1 Petitioner/defendant filed application under Order XVIII Rule 3A CPC for rejection of evidence of plaintiff by way of affidavit. The said application was dismissed by learned trial Court vide impugned order dated 07.09.2021 (Annexure P-7). Hence, the instant revision petition.

3. I have heard rival contentions of learned counsel for parties and have perused the case file carefully.

4. There is some substance in the argument canvassed by learned counsel for petitioner that respondent/plaintiff had been allowed to appear as a witness in support of his plaint in gross violation of caveat contained in Rule 3A of Order XVIII of CPC, wherein it is stated that where a party wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined by the Court.

5. Learned counsel argues that in instant case, plaintiff did not appear prior to examination of other witnesses. The controversy, in fact, is no more *res-integra* in the light of Full Bench rendition of this Court in ***“The Amritsar Improvement Trust v. Ishri Devi”*** reported as **1979 PLR 354**. Relevant thereof (para 9) is reproduced herein below:

“ Keeping the aforesaid canon of construction with regard to procedural laws in mind we may now go back to the language of Rule 3A. A bare reference thereto would make it manifest that the Legislature has undoubtedly laid down the rule that a party appearing as his own witness must so appear before any other witness on his behalf has been

examined. However, in equally express terms one exception to the said rule has also been provided by the Legislature itself. This is that with the permission of the court a party for sufficient cause may be allowed to appear even at a stage subsequent to the examination of one or all of his witnesses. It, therefore, deserves highlighting that the rule requiring a party to step into the witness-box first is not an inflexible one and can be relaxed with the permission of the Court. What however is significant to note herein is that the language of the statute does not in any way prescribe the precise time at which the permission to appear later is to be secured. It does not say that this must necessarily be in the very first instance before any witness has been examined on his behalf. One may, therefore, say that the statute is silent as to the stage at which the permission is to be secured. Nor can it be said that by necessary intendment the legislature has laid down that the said permission must be sought at the very inception of the evidence and not later. Indeed, when broadly construed, the intention of the Legislature appears to be that the normal and the ordinary rule prescribed now is that party appearing as his own witness should do so before any one of his witness. However, the rule is not an inflexible or a sacrosanct one and may be expressly deviated from with the permission of the court based on adequate reasons. No specific stage being prescribed or fixed by the statute for securing such permission, a party may perhaps as a matter of abundant caution apply at the stage of commencing his evidence and get the necessary permission and equally, if a sufficient ground is made out, he may secure the same at a later stage.”

6. Perusal of the above clearly shows that all that has been envisaged under the statute as well as very ably elucidated by Full Bench is that since there is no specific stage envisaged upto which a party can appear as a witness and therefore, same can be done at any stage, provided the Court permits him to appear as his own witness for the reasons to be recorded.

7. *Apropos*, no doubt an application was required to be filed by respondent No.1/plaintiff. The said necessity stood obviated in view of stand taken in their reply to application filed by petitioner/defendant No.1 seeking to reject examination-in-chief of plaintiff wherein averments are

akin to nature of filing of an application to seek permission of Court to appear as his own witness.

8. Learned trial Court was alive to the entirety of matter and application of law; and it was only after going through the same reflected its mind *qua* said leave to be granted in para Nos. 5 and 6 of the order, which is extracted herein below:

“5. Vide this application, the defendant No.1 has sought rejection of examination-in-chief of the plaintiff. According to defendant No.1, the plaintiff himself had to appear first as per the provisions of Order 18 Rule 3A of CPC. However, he without prior permission of the Court examined other witnesses before himself appearing in the witness box. At this stage, this Court considers it proper to refer to provisions of Order 18 Rule 3-A CPC which says that

“where a party himself wishes to appear in the witness box, he shall so appear before any other witness on his behalf has been examined, unless the Court for reasons to be recorded, permits him appear as his own witness at a later stage.”

Therefore, as per the provisions of Order XVIII Rule 3A of CPC, the plaintiff himself had to appear as a witness before examining PW1 and PW2. Now, question arises whether affidavit of PW3 (plaintiff) deserves to be rejected for non-compliance of provisions of Order XVIII Rule 3A of CPC or not. In order to decide this question, it is necessary to refer to proceedings of the case. A perusal of the file reveals that vide order dated 13.11.2018, issues were framed in this case. On 24.09.2019 PW1 Mohan Lal was examined. On 21.11.2019, PW2 Barkha Ram Swami, Advocate was examined. On 24.09.2019 and 21.11.2019, no objection was raised by any of the defendants rather their counsel conducted cross examination of both the witnesses. On 23.08.2021, examination-in-chief of PW Surjit Singh i.e., plaintiff was recorded. Even at that stage, no objection was raised by learned counsel for defendants. As firstly, evidence of PW1 and PW2 was recorded and after that, examination-in-chief of plaintiff was recorded without any objection from the defendants, it is assumed that defendants waived their objection regarding recording of evidence of plaintiff at later stage. When the court allowed evidence of PW1 and PW2 recorded before evidence of plaintiff and thereafter, recording of evidence of plaintiff, it is assumed that Court impliedly permitted plaintiff to appear in witness box at a

later stage i.e., after recording of evidence of other witnesses.

6. The procedural provisions are meant to regulate the proceedings and procedure. Procedural law is not subject to strict interpretation. All the rules of procedure are handmaid of justice. The foremost consideration is administration of justice and not strict adherence to procedural law. Any interpretation which hampers administration of justice and cause undue hardship to a party cannot be adopted. In the case in hand, no prejudice had been caused to defendants by examining other witnesses before the recording of evidence of plaintiff. On the contrary, rejection of the affidavit of plaintiff would result in irreparable loss to the plaintiff.”

9. In the aforesaid premise, requirement of grant of leave already stands satisfied as is self evident from impugned order. No useful purpose would be served now by requiring the plaintiff to file specific application for the same very purpose.

10. To my mind, the learned trial court has recorded sound and sufficient reasons as per record and passed the impugned order in accordance with law. I thus see no irregularity either in facts or in law so as to exercise extraordinary revisional jurisdiction vested with this Court and I am in support of view taken by learned trial Court.

11. Resultantly, instant revision petition is dismissed.

12. Pending application(s), if any, shall also stand disposed of.

FEBRUARY 08, 2023
Shalini

(ARUN MONGA)
JUDGE

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