

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

201

CR No.4957 of 2019

Date of Decision : 13.01.2023

Gurbhej Singh

....Petitioner

VERSUS

Major Singh

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Chanakya Batta, Advocate for
Mr. P.L. Singla, Advocate for the petitioner.

Mr. N.K. Manchanda, Advocate for the respondent.

ALKA SARIN, J. (Oral)

The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 02.08.2019 passed by the Civil Judge (Jr. Division), Moga vide which the application filed by the plaintiff-respondent for permission to inspect the record of the Trial Court and to produce expert witness regarding Ex.D1 has been allowed.

The brief facts relevant to the present case are that the plaintiff-respondent filed a suit for recovery of Rs.6,80,000/- on the basis of a pronote. In the written statement filed by the defendant-petitioner, the stand taken was that there had been a compromise dated 09.09.2017 (Ex.D1) between the parties. The evidence of the plaintiff-respondent was closed on 22.10.2018. After the defendant-petitioner had closed his evidence, an application was moved by him for leading secondary evidence regarding the compromise dated 09.09.2017 (Ex.D1). The said application was allowed vide order dated 29.01.2019. Immediately thereafter, on 28.03.2019, the present application was moved for permission to inspect the Court file and to produce the expert witness regarding the compromise dated 09.09.2017

(Ex.D1). Vide the impugned order dated 02.08.2019, the said application was allowed holding that the onus to prove the compromise was upon the defendant-petitioner and that the defendant-petitioner had proved the compromise by way of secondary evidence. It was further observed that though no formal issue was framed regarding the compromise (Ex.D1), however, an opportunity ought to have been given to the plaintiff-respondent to rebut the said evidence.

Learned counsel for the defendant-petitioner has contended that since the plaintiff-respondent had not reserved his right for rebuttal as envisaged under Order XVIII Rule 3 of the Code of Civil Procedure, 1908, hence, no opportunity ought to have been given.

Per contra learned counsel for the plaintiff-respondent has contended that the provisions of Order XVIII Rule 3 CPC would not apply to the present case as no formal issue was framed regarding the compromise (Ex.D1). It has further been contended that once the photocopy of the compromise was placed on the record initially and the compromise was sought to be proved by way of secondary evidence, which was allowed vide order dated 29.01.2019, the Court rightly permitted the application of the plaintiff-respondent to inspect the record of the Court and allowed expert evidence qua the compromise (Ex.D1).

I have heard learned counsel for the parties.

In the present case, plea of compromise dated 09.09.2017 was raised by the defendant-petitioner. Though, no formal issue was framed, however, the onus to prove the said compromise lay upon the defendant-petitioner. Initially only a photocopy of the compromise was produced on

the record and subsequently, vide order dated 29.01.2019, the defendant-petitioner was permitted to prove the said compromise by way of leading secondary evidence. While permitting the defendant-petitioner to lead secondary evidence qua the compromise, no opportunity was given to the plaintiff-respondent to rebut the same. The application subsequently filed by the plaintiff-respondent for inspection of the record and for leading expert evidence qua the compromise (Ex.D1) has rightly been allowed by the Trial Court inasmuch as since the defendant-petitioner was given an opportunity to lead secondary evidence qua the compromise, an opportunity ought to have been given to the plaintiff-respondent to rebut the said evidence. The provisions of Order XVIII Rule 3 CPC would not apply in the present case inasmuch as there was no formal issue which was framed regarding the compromise (Ex.D1).

In view of the above, I do not find any merit in the present revision petition which is accordingly dismissed. Pending applications, if any, also stand disposed off.

13.01.2023

jk

**(ALKA SARIN)
JUDGE**

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO