

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-4550-2022 (O&M)
Date of decision: 26.04.2023

RAMESH KUMAR BANSAL ...Petitioner
VS
ASHOK KUMAR ...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Rakesh Chopra, Advocate,
For the petitioner.

Mr. Nikhil Chopra, Advocate,
For the respondent.

ARUN MONGA, J. (ORAL)

Present revision petition is to set aside impugned order dated 05.08.2022 (Annexure P-1) passed by Learned Additional Civil Judge (Senior Division), Fatehgarh Sahib, whereby application filed by petitioner to allow his son Varun Bansal to submit his own affidavit of evidence in place of petitioner/plaintiff was dismissed.

2. Learned counsel for the petitioner submits that petitioner filed a suit seeking recovery of Rs. 50 lakh which is the advance money of agreement of sale dated 08.02.2013. After issues were framed, the case was fixed for evidence of petitioner. Petitioner tendered into evidence his own affidavit. After almost gap of three years, petitioner became unwell. Giving preference to his health, petitioner filed an application before learned trial Court seeking permission of the Court to allow Varun Bansal his son to submit his own affidavit by way of examination-in-chief in place of petitioner himself. Petitioner appointed his son Varun Bansal as his

attorney. Learned trial Court vide impugned order declined the request of the petitioner/plaintiff to allow his son to appear as a witness in place of petitioner.

3. Learned counsel for respondent vehemently opposes the petition.

4. I have heard learned counsel for the parties and gone through the case file.

5. Order assailed herein is premised, *inter alia*, on the following reasoning:

“3. Whereas learned counsel for respondent/defendant has argued that plaintiff is not suffering any health problem. Facts mentioned in the application are wrong. Plaintiff has filed wrong facts in his examination-in-chief. Therefore, he does not want to face cross-examination. There is no provision for substituting the affidavit. If Ramesh Kumar plaintiff has lost his memory he has also not in position to appoint his attorney. Therefore question of substituting affidavit does not arise. Hence, application should be dismissed.

4. I have heard the contentions of both the learned counsels and have gone through the case file. Vide present application applicant/plaintiff seeks relief of substituting affidavit. There is no provision for substituting affidavit in CPC. However grounds mentioned by applicant/plaintiff is ill health of applicant and to prima facie establish this fact he has placed on record some documents. But all these medical prescriptions does not establish that applicant is not fit to make statement in the court. Most of the prescriptions relates to normal age related problems and hypertension, diabetes etc. and there is no finding given by any medical expert regarding fitness of applicant being not unable to give statement before the Court. In absence of any cogent medical record and there being lack of any medical document. Therefore, present application is without any merit and same stands dismissed.”

6. Having seen the reasons as above recorded by the trial Court, I am of the view that in order to meet the ends of justice, it would be just and proper that petitioner is given liberty to examine his son, who is stated to be ‘special power of attorney’ holder of the petitioner on record contained at

Annexure P-5 and the latter is given liberty to appear as witness being attorney before learned Court below.

7. In any case, petitioner is at liberty to drop the witness whose affidavit by way of examination-in-chief has already been filed, if so advised.

8. Disposed of accordingly.

(ARUN MONGA)
JUDGE

26.04.2023
vandana

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