



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-3061-2024

Ram Ji Dass

.... Petitioner

Vs.

Kulwant Rai Sethi and Others

.... Respondents

CR-3178-2024

Kulwant Rai Sethi and another

.... Petitioners

Vs.

Ram Ji Dass and Others

.... Respondents

Reserved on: 05.07.2024
Pronounced on: 08.07.2024

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued by:- Mr. Rajesh Sethi, Advocate for the
petitioners in CR-3061-2024 and
for respondents in CR-3178-2024.

Mr. Himanshu Bansal, Advocate for the
petitioners in CR-3178-2024 and
for respondents in CR-3061-2024.

DEEPAK GUPTA, J.

Petitioners in both the cases are aggrieved by the order dated
26.09.2023 (*Annexure P-9*) passed by the Court of learned Additional Civil
Judge (Senior Division), Dabwali, District Sirsa, whereby similar applications



moved by the two parties, for marking their presence through Video Conferencing, by exempting their personal appearance, was dismissed.

2. The joint submission made by learned counsel for both the parties is that Shri Khetu Ram, the predecessor in interest of the parties to the suit, was owner in possession of certain properties as detailed in para No.3 of the plaint. Said Shri Khetu Ram expired on 07.05.1988, leaving behind 5 sons and 2 daughters. One of the sons Tansukh and the two daughters have since expired. All the legal heirs of Khetu Ram are parties to the suit. During his lifetime, said Khetu Ram had executing a Will dated 22.05.1984, whereby house mentioned at serial No.3(i) of the plaint was bequeathed to Tansukh Dass (*deceased father of one of the defendant*). Two plots mentioned at para No.3(iii) of the plaint were bequeathed in favour of Kulwant Rai Sethi (*defendant No.1*). The amount lying deposited with M/s. Madan General Store mentioned at serial No.3(iv) of the plaint was bequeathed in favour of Krishan Kumar (*defendant No.3*); whereas, the agricultural land (*hereinafter referred as suit land*) mentioned at serial No.3(ii) of the plaint was bequeathed in favour of the plaintiff Ram Ji Dass. Parties to the suit are the legal heirs of the deceased.

3. Since mutation No.6376 was entered on the basis of natural succession of Shri Khetu Ram, it compelled the plaintiff Ram Ji Dass (*petitioner of CR N: 3061-2024*) to bring the suit for declaration to the effect that he is the owner in possession of the suit property on the basis of Will dated 22.05.1984 and that mutation No.6376 sanctioned on the basis of natural succession was wrong and void. Defendants filed written statement, admitting the entire claim of the plaintiff on 13.12.2022.



4. Learned trial Court vide an order dated 13.12.2022 directed both the parties to appear physically on 28.03.2023. On the adjourned date, plaintiff, a resident of USA, moved an application for his appearance through Video Conferencing facility stating that he is an old aged person of 80 years, undergoing medical treatment and had been advised not to travel out of the country. Similar application was moved by defendant Nos.1 & 2. However the trial Court vide its order dated 28.03.2023 (*Annexure P-7*) declined the request and again directed physical appearance of both the parties on the next date of hearing.

5. The order dated 28.03.2023 was challenged by both the sides before this court by filing CR-4084-2023 and CR-4094-2023, both of which were disposed of by a co-ordinate Bench of this Court vide common order dated 14.09.2023 (*Annexure P-8*), by setting aside the order dated 28.03.2023 and with further direction to the trial Court to decide the application afresh in accordance with law by passing the speaking order. However, the trial Court again dismissed the applications of both the parties by way of impugned order dated 26.09.2023 (*Annexure P-9*).

6. Assailing the impugned order, learned counsels for both the sides contend that the plaintiff is residing abroad. He is 80 year old person suffering from old age ailments and so, unable to travel out of the country. Similarly, defendant Nos.1 & 2 are both residents of USA and aged person. Learned trial Court failed to consider that requirement of the parties for their physical presence was not absolute necessary, as not only the claim of the plaintiff had been admitted but also considering the fact that the parties or even the witnesses could be interacted and examined by virtual hearing through Video Conferencing.



7. After hearing learned counsel for the parties, I find merit in the contention.

8. The impugned order is not only unsustainable but is at the level of perversity and appears to have been passed by learned trial Court just to satisfy his ego. This Court fails to comprehend that despite advancement of science and technology and with the introduction of facilities for virtual hearing in the Courts and despite the fact that whole emphasis of the latest directions from Hon'ble Apex Court as well as this Court has been to reduce the footfall in the Courts, and despite the fact that claim of the plaintiff had not been disputed by the defendants, why the trial Court felt it necessary that parties should physically appear in person, putting them to unavoidable inconvenience, considering the fact that both the parties are residing in USA and are old aged persons.

9. In a case titled ***“Basudha Chakraborty & Anr. v. Neeta Chakraborty”*** ***Special Leave to Appeal (Crl.) No.23582/2024*** decided by Hon'ble Supreme Court on 20.05.2024, there was a dispute relating to marital discord between the parties. The High Court was insisting for personal appearance of both the petitioners including an ailing petitioner to take arduous journey from Mumbai. Hon'ble Supreme Court observed as under:

“We are also at loss to comprehend as to why despite the advancement of science and technology and with the introduction of facilities for virtual hearing in the High Courts, the Court did not consider it desirable to grant liberty to the two petitioners to appear before it through the virtual mode.

The dispute that the High Court is seized of arises out of a marital discord between the spouses and the situation, prima facie, was not such so as to call for the Court's insistence for personal presence of both the petitioners including the ailing petitioner No.2 by taking an arduous journey from a distant place like Mumbai despite his medical conditions. If the Court thought it fit to interact and bring about a settlement between



the parties, an attempt to achieve it by allowing the petitioners to attend proceedings through the virtual mode ought to have been made”

10. In ***Re Guidelines for Court functioning through Video Conferencing during COVID-19 pandemic, 2021(5) SCC 454***, Hon’ble Supreme Court issued directions to all the High Courts to frame rules for governing the Video Conferencing, to govern not only the High Court but also the District Courts, which shall cover the appeal proceedings as well as trials. Hon’ble Supreme Court further directed that till such rules are framed, the High Courts may adopt the model Video Conferencing rules provided by the E-Committee of the Supreme Court of India.

11. Way back in 2003, in ***“State of Maharashtra v. Dr. Praful B. Desai” (2003) 4 SCC 601***, a witness living in USA was not willing to come to India, though he was willing to give evidence. Hon'ble Supreme Court allowed his evidence to be recorded by way of Video Conferencing by observing that the Court may resort to Video Conferencing in appropriate cases, whereby the party/witness is not put to any inconvenience. In that case, Hon'ble Supreme Court observed even for recording statement of an accused under Section 313 of Code of Criminal Procedure, 1973, his physical presence was not required. Hon'ble Supreme Court also referred to Section 284 of the Code of Criminal Procedure, 1973 to hold that normally procuring evidence of a witness from a far-away country like USA, involved huge expenses and/or inconvenience and so, commission could be issued for recording the evidence. However with the advancement in science and technology, it is possible to record such evidence by way of Video Conferencing in the town/city, where the Court is situated.

12. In ***“Sucha Singh v. Ajmer Singh and another”***, party was living in



USA. His evidence was considered to be material to the decision of the case. This Court allowed the examination of the said party by way of Video Conferencing by making following observations:

“It comes out that Civil Suit between the parties is pending before the Court of learned Civil Judge (Junior Division), Samrala. The matter came up before this Court on the question as to whether Sucha Singh, who is residing at USA, can allow to be examined by way of Video Conferencing. This Court vide order dated 16.10.2015 passed in CR 6571 of 2014 allowed the said prayer stating that the witness can be confronted with the documents with close proximity to the camera. The witness will go to some local authority where such facility is available. Petitioner himself is at liberty to choose a place which shall be a public authority where such facility is available and inform the Court within a period of four weeks. Alternately, the petitioner will identify the Indian Consulate in the nearest place from his residence and produce the Court order to secure the permission for hearing. The petitioner shall make himself available during the Court working hours in India and give a date which is mutually convenient to the Court and the Consulate or the Public Office.

I am of the view that the evidence of Sucha Singh who is party to the case is very material. Therefore, his evidence is required to be recorded. He is living in USA. Since, there is 12 hours difference of time, therefore, when it is a day time in India, there is night time in USA. Therefore, there will be a difficulty in approaching the Public Authority at night time to allow Video Conferencing facility. The Video Conferencing is now available at Computer and the Mobile and so many applications are available like Facetime, WhatsApp, Skype and other similar applications.

It being so, necessity of approaching the nearest Consulate is not there. Since, evidence is material to the decision of the case, therefore, the time for recording statement of Sucha Singh is extended and Sucha 2 of 3 Singh is allowed to examine himself by way of Video Conferencing through Mobile or Computer on an application, which shall be intimated to the trial Court and which shall be installed on the Computer, Laptop or I Pad. The petitioner shall intimate the time and date when he will be available on such application to the Court within two weeks from today and thereafter, the Court shall fix the convenient date for examination and cross-examination of said Sucha Singh through Video Conferencing. The said witness shall be identified by the opposite party or any other person nominated by them. It is further directed that if any document is sought to be put to the said witness, photocopy of the same will be supplied to the opposite party in advance and the same can be sent to the witness, in advance, so that he may answer on the said document.”



13. In “*Ami Ranjan v. State of Haryana*” 2021(2) RCR (Civil) 628, a Division Bench of this Court even directed a marriage to be registered through Video Conferencing, by holding that parties were entitled to valid marriage certificate. In that case the husband was living in India and wife was living in USA and due to COVID-19 pandemic emergency, the wife was unable to come to India.

14. In “*Sumati Gulhati v. Prateek Bajaj*” 2021(3) RCR (Civil) 383, in a petition under Section 13 of the Hindu Marriage Act, the husband was residing at Singapore and it was not possible for him to travel to India for his examination keeping in view the situation of pandemic COVID-19. Direction was given by this Court to record the statement of the wife while adhering to the guidelines circulated in 2018 as well as model Video Conferencing rules circulated by Hon’ble Supreme Court of India.

15. Considering the consistent view taken by Hon’ble Supreme Court as well as by this Court from time to time and considering the advancement of science and technology and the strenuous efforts being made by the E-Committee of the Hon’ble Supreme Court of India as well as by this Court so as to reduce the footfall in the Courts, and also having regard to the condition of both the parties, who are quite old aged and residing in USA, it is held that it was not at all required for the trial Court to insist for physical appearance of the parties, so as to put them to much inconvenience.

16. Consequently, the impugned order dated 26.09.2023 is hereby set aside. Trial Court is directed to permit the plaintiff (*petitioner in CR-3061-2024*) as well as defendants No.1&2 (*petitioners in CR-3178-2024*) to appear in the

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Court by way of Video Conferencing or any other mode like mobile or computer through any of the applications like WhatsApp etc., as per the relevant rules.

17. It has been informed to this Court that petitioner Ram Ji Dass has a driving license in USA, which is considered to be best proof of identification, bearing his photograph. He also has a passport bearing his photograph and mobile phone etc. The parties appearing through Video Conferencing/any of the mobile/computer application, can be identified by their respective counsels.

Disposed of, accordingly.

A photocopy of this Court be placed on the file of connected case.

08.07.2024

Neetika Tuteja

**(DEEPAK GUPTA)
JUDGE**

Whether speaking/reasoned?

Yes

Whether reportable?

Yes