



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

115

CR-5448-2019**Date of decision : 09.09.2024****Balbir Singh and others****..... Petitioners****versus****Boota Singh Basi****..... Respondent****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

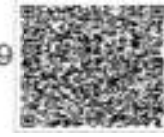
Present: Mr. Arshdeep Singla, Advocate
for the petitioners.

Mr. Ashok Sharma Nabhewala, Advocate and
Mr. Gauri Sharma, Advocate
for the respondent.

PANKAJ JAIN, J. (Oral)

1. Present revision petition is directed against order dated 13.08.2019 passed by ACJ (Sr. Division), SAS Nagar, Mohali, whereby application filed by petitioners-defendants under Section 151 CPC seeking permission to cross-examine PW-2 Boota Singh Basi stands rejected.

2. Plaintiff filed suit for recovery of ₹5 lakhs against the defendants-petitioners. Defendants were proceeded ex-parte vide order dated 16.01.2019 when the matter was fixed for filing reply to the application filed by the plaintiff seeking permission to record his statement through video conferencing. No evidence was present on 16.01.2019. The matter was adjourned to 25.01.2019. On 25.01.2019, application filed by the plaintiff was allowed. It was ordered that statement of plaintiff be recorded through V.C. using facetime and the



matter was adjourned to 28.01.2019. On 28.01.2019, defendants were allowed to join proceedings. On the same day, statement of plaintiff-respondent Boota Singh, PW-2 was recorded. Order dated 28.01.2019 passed by Civil Judge (Sr. Divn.), Mohali reads as under:-

“Statement of plaintiff-Boota Singh recorded through VC on Watsapp as PW-2 in ex parte evidence.

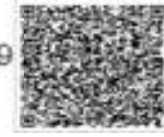
After the statement of PW-2 plaintiff-Boota Singh was recorded, Mr. Jasvir Singh Advocate has appeared on behalf of defendant No.1 to 3 and moved an application for setting aside the ex parte proceedings qua defendant No.1 to 3. Copy supplied.

Defendant No.1 to 3 are allowed to join the proceedings from the present stage as earlier also defendant No.1 to 3 are proceeded against ex parte earlier vide order dated 16.12.2017. Defendant No.1 to 3 are allowed to join the proceedings from the present stage.

Statement of Dr. Jassy Anand recorded as PW-3. Her cross- examination is deferred on request of opposite counsel. Learned counsel for the plaintiff has closed the plaintiff evidence vide separate statement.

For recording cross-examination of PW-3 Dr. Jassy Anand, to come up on 13.02.2019.”

3. Present application was moved by the defendants-petitioners seeking permission to cross-examine PW-2 Boota Singh Basi on 13.02.2019. Reply thereto was filed by the plaintiff on 01.04.2019. Trial Court vide impugned order dated 13.08.2019 has dismissed the application filed by the defendants holding that application seeking permission to cross-examine PW-2 Boota Singh has



been filed without challenging order dated 28.01.2019. Vide said order, defendants were permitted to join proceedings from that stage. The order having attained finality, the application cannot be allowed.

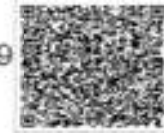
4. Counsel for the petitioners submits that vide impugned order, the cause of the petitioners is being seriously prejudiced, as they are being denied valuable right to cross examine the plaintiff which is against the spirit of law.

5. Counsel for the respondent-plaintiff however submits that the conduct of the defendants shows their intent was only to delay the proceedings and thus Trial Court rightly rejected the application filed by the defendants.

6. I have heard counsel for the parties and have carefully gone through the records of the case.

7. The defendants were proceeded ex-parte on 16.01.2019. They moved an application for setting aside ex-parte order and allowing them to join proceedings on 28.01.2019. On 28.01.2019 itself, the application was allowed. Petitioners-defendants were allowed to join the proceedings. They are being denied right to cross examine plaintiff on the ground that by the time the application was moved, statement of Boota Singh had already been recorded. Since they were allowed to join proceedings from 'the present stage' i.e. after examination of Boota Singh, they cannot be allowed to cross examine him.

8. In the considered opinion of this Court, the Trial Court has taken too technical a view to be sustained. Proper course would have been that in the presence of counsel for both the parties while defendants were being allowed to join the proceedings, they could have



been asked to cross-examine the plaintiff on the same day or by granting a short adjournment. The order itself shows that cross-examination of PW-3 was deferred on request made by opposite counsel, yet Trial Court recorded that counsel for the plaintiff has closed plaintiff's evidence. The Trial Court ought to have shown more sensitivity towards the rights of the parties and should not have sacrificed valuable right of the defendants on the altar of procedure. Wherever the rules of procedure cross path with the substantive rights of the parties, they have to pave way for the substantive rights. After all the very objective of their being in existence is to advance the cause of justice.

9. The Apex Court in *Kailash v. Nanhku 2005(4) SCC 480* has held as under:-

“All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the Statute, the provisions of the CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. The observations made by Krishna Iyer, J. in *Sushil Kumar Sen v. State of Bihar (1975) 1 SCC 774*, are pertinent:-

“The mortality of justice at the hands of law troubles a Judge's conscience and points an



angry interrogation at the law reformer.

The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act *ex debito justitiae* where the tragic sequel otherwise would be wholly inequitable. Justice is the goal of jurisprudence — processual, as much as substantive."

In *State of Punjab and another v. Shamlal Murari r* (1976) 1 SCC 719, the Court approved in no unmistakable terms the approach of moderating into wholesome directions what is regarded as mandatory on the principle that

"Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice."

In *Ghanshyam Dass v. Dominion of India* (1984) 3 SCC 46, the Court reiterated the need for interpreting a part of the adjective law dealing with procedure alone in such a manner as to sub-serve and advance the cause of justice rather than to defeat it as all the laws of procedure are based on this principle."

The aforesaid view has further been reiterated by the Apex Court in *Rani Kusum v. Kanchan Devi* 2005 (6) SCC 705."

10. In view of above, present revision petition is allowed, subject to cost of Rs.5,000/- to be paid to PGIMER Poor Patients'



Welfare Fund.

11. Ordered accordingly.

(PANKAJ JAIN)
JUDGE

09.09.2024
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No