

**CRR(F)-668-2019 (O&M)**

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRR(F)-668-2019 (O&M)
Date of decision:03.12.2024****KOMAL AND ANOTHER**

... PETITIONERS

V/s**MAUSAM SINGH**

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Rakesh Nehra, Senior Advocate with
Mr. Sauhard Singh, Advocate and
Ms. Himani Anand, Advocate
for the petitioner.

Mr. Sanjiv Sheoran, Advocate
for the respondent.

SUMEET GOEL, J.

1. Present revision petition arises out of the petition filed by the petitioner No.1 i.e. wife of the respondent-herein on her behalf, as well as on behalf of their minor daughter (petitioner No.2-herein), under Section 125 of the Code of Criminal Procedure, bearing No. MNT 125/374/2017, before the Family Court, Bhiwani. The challenge in the present petition before this Court is laid to the order dated 06.08.2019 passed by the learned Principal District Judge Family Court, Bhiwani, whereby, the Family Court by partially allowing the application of the petitioner No.1 declined the request of the petitioner to summon the witness from Railway Department,



along with the record pertaining to the salary record of the respondent.

2. Perusal of the record reveals that while the petition under Section 125 Cr.P.C. filed by the petitioner was pending final adjudication before the Family Court, the petitioner No.1 had closed her evidence. However, she filed two separate applications, thereafter, one, seeking permission to place on file some documents by way of additional evidence; and second, seeking permission to keep on the case file, some documents and to summon the Railway Authorities along with the Salary record of the respondent as additional evidence.

3. Impugned order passed by the Learned Family Court shows that the contents of both the applications have gone unrebutted, in view of the statement of the learned counsel for the respondent, that no reply to the said applications is to be filed. It is held by the Family Court that during the course of arguments, the learned counsel for the respondent submitted that he has no objection if petitioner No.1 is allowed to produce documents by way of additional evidence. The Family Court in view of the no-objection given by the learned counsel for the respondent, allowed both the applications filed by the petitioner No.1 and allowed her to produce documents in support of her case by way of additional evidence. However, in just one line, thereafter, the Family Court held that no ground is made out to summon the witness of the Railway Department, as alleged in the application. It is this part of the



impugned order dated 06.08.2019, which is challenged by the petitioner before this Court.

4. It is argued by the learned counsel for the petitioner that the income aspect of the respondent-husband being pivotal in maintenance proceedings, the learned Family Court ought to have allowed to summon the witness from the employer department of the respondent along with his salary record. It is submitted that the non-summoning of the witness from the employer department of the respondent has caused great prejudice to the cause of the petitioner in the maintenance proceedings and such the same is liable to be set-aside.

5. Learned counsel for the respondent has opposed the petition while submitting that before the concerned Family Court, it was conceded on behalf of the respondent that he has no objection to the application in question as far as documentary evidence is concerned, thus the order passed by the learned Family Court is legally sustainable. It has been further contended that the application under Section 311 of the Cr.P.C. was moved on behalf of the petitioner No.1 at a very belated stage and after the evidence on behalf of the petitioner No.1 was closed. Thus, the learned Family Court was right in disallowing the application as far as summoning of departmental witness was concerned. Learned counsel for the respondent has prayed for the dismissal of present petition.

6. I have heard the arguments advanced on behalf of the rival parties by the learned counsel and have perused the records of the case.

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7. The impugned order dated 06.08.2019 passed by the Family Court, Bhiwani rejecting the prayer of the petitioner for summoning the witness from the employer department of the respondent, along with his salary record is a whimsical order. Family Court while declining the prayer of the petitioner in that regard has not referred to any argument advanced by the parties on that aspect of the matter. The impugned order being totally non-speaking and unreasoned has failed to spell out any thought process that weighed with the Family Court to arrive at a conclusion for declining the prayer of the petitioner. The grant of limited relief while allowing partial applications filed by the petitioner to the extent of concession granted on behalf of the respondent, shows that the prayer of the petitioner has been rendered subservient to the consent of the respondent only, which is not tenable in law. The Family Court ought to have applied its independent mind to the facts of the case and then passed a reasoned order disposing of the applications filed by the petitioner. However, the grant of consent on the part of the respondent, to the partial prayer of the petitioner, though can certainly be a circumstance that weighed with the court to grant that prayer, but the remaining part of the prayer of the petitioner cannot be obliterated without returning any reasoned finding thereupon.

7.1. Non-appreciation of the arguments and reasons put forth on behalf of the petitioner, qua her prayer for summoning the witness from the employer department of the respondent with his salary record, has the tendency of condemning her unheard. The Family Court while declining the prayer of the petitioner in that regard is



bound to pass the reasoned order thereby clearly spelling out the factors that prompted it to pass such an order and objective satisfaction must be the basis of such an order to make it sustainable in law. It is a cardinal duty of the court to render a reasoned and speaking order, meticulously analyzing the submissions and contentions advanced by the rival parties. An order bereft of such judicial deliberation and passed in a mechanical or perfunctory manner undermines the principles of natural justice and due process. Failure to provide cogent reasons not only vitiates the sanctity of judicial proceedings but also constitutes a grave miscarriage of justice, eroding public confidence in the impartiality and fairness of the judiciary. An adjudication devoid of reasons is akin to a body without soul, lacking the essence that gives it life and legitimacy.

8. In maintenance proceedings instituted on behalf of the destitute wife and minor daughter, in order to receive maintenance at par with the standard of life being enjoyed by the respondent-husband, the proof of income of the husband being the most essential factor, the requirement to prove the same with the best evidence, cannot be lost sight of. The petitioner having no other means to prove the income of the respondent sought to summon the salary record of the respondent from his employer's office. The Family Court ought to have acceded to the prayer made on behalf of the petitioner as it would have advanced the cause of justice and curtailed the likelihood of failure of justice. In the realm of evidence law, it is a well-established principle that facts must be proved through the best evidence available. This doctrine mandates that the most reliable and



primary evidence, as opposed to secondary substitutes, should be presented to substantiate a fact. When adjudicating an application for introducing additional evidence, the court must meticulously assess the probative value, materiality, and relevance of the evidence sought to be adduced. If the evidence pertains to a fact of substantial import, pivotal to the determination of the matter in controversy, judicial discretion must incline towards allowing its production. The court, while exercising such discretion, must remain mindful of the overarching objective of ensuring a just adjudication. Thus, applications for additional evidence, when justified by necessity, ought to be approached with a liberal yet judicious perspective. This fact holds all the more significance in view of the fact that the application filed by the petitioner, seeking to adduce the said evidence, to prove the income of the respondent, has not even been opposed by filing any reply thereto.

8.1 An important aspect of the matter deserves consideration at this juncture. The impugned order dated 06.08.2019 was passed by a Family Court established under the Family Courts Act, 1984. Section 14 of the Family Courts Act provides for an exception to the general rule of evidence regarding admissibility of statements and documents if permissible by the Court etc. By virtue of Section 14 of the Family Courts Act, a Family Court is empowered to look into whatever material is placed before it; take a decision on admissibility of material in a broad based manner and may ignore the technicalities of evidence law. Thus, the proceedings before a Family Court will not be strictly governed by the technicalities of Indian Evidence Act,



1872/Bharatiya Sakshya Adhiniyam, 2023. A profitable reference in this regard may be made to a judgment of this Court in the case titled as ***Karan Puri vs. Sonika Chaudhary; 2024(1) RCR(Civil) 531***, relevant whereof reads as under:-

“Analysis (re law)

9. Sections 10(1) of the 1984 Act empowers a Family Court to be a Civil Court for the purposes of exercising all powers vested in a Civil Court and the provisions of CPC have been made applicable to the proceedings before the Family Court, but at the same time it has been expressly stipulated in Section 10(1) of the 1984 Act itself that such application of CPC shall be "subject to the other provisions of this Act and the Rules". Section 10(3) of the 1984 Act postulates that nothing in Section 10(1) shall prevent the Family Court from laying down its own procedure so as to deal with the matter in issue before it i.e. for arrival at a settlement in respect of the lis of any suit/proceedings before it or to determine the truthfulness of the facts in dispute. This provision by itself shows that the legislature, while broadly mandating for application for CPC to proceedings before a Family Court, has vested discretion in favour of such Family Court to devise a procedure on its own. The provisions of Section 10(1) and Section 10(3) of 1984 Act, when juxtaposed, reflect the clear legislative intent to the effect that CPC does not apply compulsorily to proceedings before Family Court.

9.1 Further a perusal of Section 20 of the 1984 Act shows that it contains a clause having overriding effect viz-a-viz anything contained in any other law for the time being in force.

9.2 The Golden Rule of Interpretation (Literal Rule of Interpretation), as relied upon by the Hon'ble Supreme Court in the judgments of Dikshitulu's case (supra) and Laxmi Narain Dhut's case (supra), when applied in the present scenario to the provisions of 1984 Act, shows that the language as also phraseology employed in the legislation in question is precise, plain, unambiguous and unequivocal. The legislative intent, that CPC does not mandatorily apply in full force to proceedings under 1984 Act, is clearly decipherable from a bare reading of the legislation in question.

10. The statement of objects and reasons recorded for enactment of the Family Courts Act, 1984 reads;

"The Law Commission in its 59th Report (1974) had also stressed that in dealing with disputes concerning the family the Court ought to adopt an approach radically different from that adopted in ordinary civil proceedings and that it should make reasonable efforts at settlement before the commencement of the trial. The Code of Civil Procedure, 1908 was amended in 1976 to provide for a special procedure to be adopted in suits or proceedings relating to matters concerning the family. However, not much use has been made by the Courts in adopting this conciliatory procedure and the Courts continue to deal with family disputes in the same manner as other civil matters and the same adversary approach prevails. The need was, therefore, felt, in the public interest to establish Family Courts for speedy settlement of family disputes.



10.1 The Statement of objects and reasons for the enactment in question i.e. Family Courts Act, 1984 further states:

"The Bill, inter alia, seeks to,-

(g) provide that the parties to a dispute before a Family Court shall not be entitled, as of right, to be represented by a legal practitioner. However, the Court may, in the interest of justice, seek assistance of a legal expert as amicus curiae;

(h) simplify the rules of evidence and procedure so as to enable a Family Court to deal effectively with a dispute"

10.2 A critical analysis of the above, when interpreted in light of the Heydon's Rule of Interpretation (as relied upon by the Hon'ble Supreme Court in the judgment of R.M.D. Chamarbaugwalla's case-supra), reflects that the 1984 Act was enacted to adopt a radically different approach from that adopted in ordinary civil proceedings & simplify the rules of evidence/procedure so that a Family Court could more effectively deal with a matrimonial dispute. This aspect, when examined in the backdrop of Section 13 of the 1984 Act (where entitlement, as of right, to a legal practitioner has been denied and discretion has been vested with the Family Court to allow assistance of a legal expert) clearly indicates that the technicalities & intricacies of the CPC are not to apply to the proceedings before the Family Court. A bare perusal of Section 14 of the 1984 Act shows that the same has also been introduced to wither away the rigours of Indian Evidence Act, 1872 & the Family Court has been empowered to take any material into evidence which as per its opinion furthers the cause of effective adjudication of a matrimonial dispute. The Bombay High Court in Shivanand Damodar Shanbhag's case (supra) has also held that the Family Court should not go into technicalities of the Evidence Act and should take a broad decision on the material placed before it.

11. The 1984 Act is a special law brought in by legislation exclusively for adjudicating matrimonial lis. CPC is a general procedural law for civil litigation. Also, CPC was enacted in the year 1908 whereas the Family Courts Act has been enacted in the year 1984. The 1984 Act has been brought into force in Haryana w.e.f 02.11.1992, in Punjab w.e.f 01.01.2013 and in Union Territory, Chandigarh w.e.f. 16.02.2015. Therefore, it is clear that the 1984 Act is not only a special legislation but has also been enacted subsequently in point of time than CPC. Hence, it would be pragmatic approach; as per principle of generalia specialibus non derogant (as relied upon by Hon'ble Supreme Court in judgment of Jose Paulo Coutinho's case-supra) as well, to come to an inevitable conclusion that Family Courts are not fully bound by provision of CPC.

12. The provision of Order VIII Rule 1-A was inserted in CPC by way of Code of Civil Procedure (Amendment) Act, 1999 w.e.f. 01.07.2002. As per sub-rule (1), a defendant is required to produce documents, sought to be relied upon by him, at the time of filing his written statement. Sub-Rule (3) provides that in case it is not so done, the defendant may still produce the same in evidence on his behalf at the time of hearing of the suit albeit with leave of the Court. In other words, a document not produced by a defendant along with his written statement may still be received in evidence on his behalf at the time of hearing of suit with leave of the Court. An evaluative analysis of this provision, in light of judgment of Hon'ble Supreme Court in Sugandhi's case (supra), leads to the conclusion that a Court is required to liberally consider the



issue of grant of permission to bring into evidence such documents which have not been produced by a defendant along with the written statement. The Hon'ble Supreme Court in Sugandhi's case (supra) was seized of a matter arising out of a civil suit whereas the instant appeal arises from an order passed by a Family Court. This aspect assumes more significance in light of the statutory scheme of the 1984 Act, especially the provisions contained in Sections 10, 13, 14 and 20 of the 1984 Act.

13. As an upshot of above discussion, the following principles of law can be culled out:

(I) Sub Section (3) to Section 10 read with Section 20 of the Family Court Act, contains non-obstante clause and gives supremacy to the provisions of the said Act, vis-a-vis the provisions of other enactments/Acts.

(II) CPC, 1908 is not applicable with its full rigours to proceedings under the Family Courts Act, 1984. In other words; a Family Court is entitled to lay down its own procedure, as warranted by facts/circumstances of a given case and it is not bound by the procedural rigours of CPC, 1908. However, while devising its such own procedure, the Family Court ought to ensure that such procedure is in consonance with the basic canons of the jurisprudence such as principles of natural justice, good conscience and equity.

(III) A Family Court is well within its powers to take into evidence any material, which in the judicial discretion of such Family Court, may be essential for effectively adjudicating a lis before it whether or not such material fulfills the requirements of Indian Evidence Act, 1872. However, while exercising such discretion, the Family Court ought to bear in mind that receiving of such material by way of evidence does not violate the basic principles of our legal system.

(IV) Order VIII, Rule 1-A CPC of 1908 is not a mandatory provision and rather it is a directive in nature only especially with respect to the proceedings under Family Court Act, 1984. A Family Court will be well within its judicial discretion to take into evidence any material in terms of sub-rule (3) of Order VIII, Rule 1-A of CPC, 1908 without any formal application for grant of leave by the defendant. However, while exercising such discretion the Family Court is required to pass a reasoned order.”

It is evident from the foregoing discussion that Family Courts are not rigidly bound by the technicalities of the Indian Evidence Act, 1872/Bharatiya Sakshya Adhiniyam, 2023. Their primary concern lies in ensuring that justice is effectively administered. While considering the admissibility of evidence, the Court must prioritize the substantive merit and relevance of the material over procedural constraints. The guiding principle is that no evidence or material, crucial to the fair adjudication of the dispute, is



excluded from consideration. Family Courts must exercise their discretion to admit evidence with the aim of upholding equity and ensuring that all relevant facts are brought before it. In view of the above, the learned Family Court must have allowed the application under Section 311 filed by the petitioner-herein in *toto*.

9. As such the partial findings recorded by the Family Court in the impugned order dated 06.08.2019, so far as it had declined the prayer of the petitioner to summon the salary record of the respondent, from his employer's office, are not sustainable in law and are accordingly set-aside. The findings returned by the Family Court vide impugned order dated 06.08.2019 are modified to the extent, that the petitioner is permitted to summon the salary record of the respondent from his employer's office and prove the same in the maintenance proceedings pending before the Family Court, Bhiwani. With the above modification to the impugned order, the present petition stands disposed of finally.

10. Needless to state that the observations made hereinabove shall not be construed as opinion on the merits of the case.

11. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

December 03, 2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No