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

CR-5414-2024
Date of decision: 18.09.2024

Sushma

...Petitioner

Versus

Alka Yadav

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Rakesh Dhiman, Advocate for the petitioner.

VIKAS BAHL, J. (ORAL)

1. This is a revision petition filed under Article 227 of the Constitution of India for setting aside the impugned order dated 07.09.2024 (Annexure P-6) passed by the Additional Civil Judge (Senior Division), Nuh, whereby an application filed by the petitioner under Order 18 Rule 3-A of CPC has been dismissed.
2. Brief facts of the present case are that the respondent had filed an election petition under the provisions of the Haryana Panchayati Raj Act, 1994 against the present petitioner, in which challenge was made to the election of the present petitioner to the post of Sarpanch. The said election petition was numbered as EP No.8/2022. A written statement was filed to the said election petition and thereafter, the issues were framed and as is apparent from the impugned order dated 07.09.2024 (Annexure P-6), which



facts have not been controverted on behalf of the petitioner, two affidavits of witnesses namely, Ram Narain and Bharat Singh were submitted in examination-in-chief on 13.10.2023. On the request of learned counsel for the petitioner, the cross-examination of the said witnesses were deferred on 13.10.2023 and the case was adjourned to 10.11.2023 for cross-examination of PW1 and PW2 and for the remaining evidence of the respondent. On 10.11.2023, the counsel for the petitioner had partly cross-examined PW1 and the case was adjourned to 24.11.2023 for the remaining cross-examination of the evidence of the respondent. The zimni order dated 24.11.2023 and even the other zimni orders have not been placed on record but as is apparent from the impugned order, an application was moved by the present petitioner on 08.12.2023 under Order 18 Rule 3A of CPC read with Section 151 CPC praying that the respondent be directed to appear for examination before examination of other witnesses.

3. A reply (Annexure P-5) was filed to the said application in which it was stated that two witnesses were examined in chief and no objection was raised by the present petitioner or his counsel at that time and even, the counsel for the petitioner had partly cross-examined one witness and the request for adjournment was sought by the counsel for the petitioner for further cross-examining the said witness. It was further submitted that the legality, validity and the relevance of the evidence of the said witness could not be ascertained at that stage and the same could only be considered at the time of final arguments and thus, there was no necessity to examine the respondent prior to the completion of the cross-examination of the witnesses, whose evidence in chief had already been submitted and whose



cross-examination had already started, and that the said application was only filed to delay the proceedings in the election petition.

4. The trial Court, vide order dated 07.09.2024 (Annexure P-6), after taking into consideration the fact that two affidavits of two witnesses had already been submitted and one of the witnesses had also been partly cross-examined by the counsel for the petitioner and that the case was being adjourned on the request of the counsel for the petitioner for further cross-examination and at no stage, had the counsel for the present petitioner raised any objection to examine the respondent first, more so, at the time of tendering of the affidavits of the said witnesses PW1 and PW2 and also at the time of partly cross-examining PW1, had observed that thus, it was not open to the petitioner to raise the said objection. In this regard, reliance was placed upon the judgment passed by the Coordinate Bench of this Court in case titled as **Gurmail Chand Vs. Ashok Verma** reported as **2004(2) PLR 460** and the matter was thereafter adjourned to 13.09.2024 for remaining cross-examination of PW1 and PW2. The zimni order dated 13.09.2024, transpiring what order was passed on 13.09.2024, has not been placed on record.

5. Learned counsel for the petitioner has submitted that the provision of Order 18 Rule 3A of CPC is mandatory and the same has to be necessarily followed and as per the said provision, where a party himself wishes to appear as a witness, he is required to appear before any other witness on his behalf, unless the Court, for the reasons to be recorded permits him to appear as his own witness at a later stage. It is further submitted that Volume I, Chapter I, Part H of the Punjab and Haryana High



Court Rules and Orders, more so, sub Rule 2, states that the trial should begin by the party having the right to begin. It is submitted that the application filed by the petitioner for examining the respondent first was meritorious and should have been allowed and the impugned order deserves to be set aside. In this regard, reliance has been placed upon the judgment passed by the Coordinate Bench of this Court in case titled as **Jasvir Singh and another Vs. Jaspal Singh** reported as **2015(3) PLR 130**.

6. This Court has heard learned counsel for the petitioner and has perused the paper book.

7. It is not in dispute that in the present case, the respondent had filed an election petition in the year 2022, challenging the election of the present petitioner to the post of Sarpanch. After the pleadings had been completed and the issues had been framed, the respondent had submitted two affidavits of the witnesses namely, Ram Narain and Bharat Singh in examination-in-chief on 13.10.2023. It is not in dispute that the counsel for the petitioner had sought an adjournment to cross-examine them and no objection was taken by him to the effect that the respondent should be examined first. On 13.10.2023, on account of the said request made, the case was adjourned to 10.11.2023 for cross-examination of PW1 and PW2. On 10.11.2023, the counsel for the petitioner partly cross-examined PW1 and the case was adjourned to 24.11.2023, without taking any objection and the said fact is also not disputed. Furthermore, what transpired on 24.11.2023 is not known as the said zimni order has neither been annexed nor the said fact could be ascertained from the impugned order.

8. An application (Annexure P-4) was moved by the present



petitioner under Order 18 Rule 3A of CPC for the first time on 08.12.2023, i.e., after partly cross-examining PW1. As has been observed hereinabove, the trial Court had dismissed the said application by observing that since PW1 had been partly cross-examined and PW2 had been examined in chief and thus, the said objection could not be allowed at that stage. The Coordinate Bench of this Court in ***Gurmail Chand's case*** (Supra), in a similar case, while dealing with the similar argument and while considering the provision of Order 18 Rule 3A of CPC, had observed that in case, the petitioner therein had any grievance regarding the sequence of examination of plaintiff therein, then, the said objection should have been taken on the very day of the examination of first witness and once examination-in-chief of two witnesses had been given and other witness had also been cross-examined then, the trial Court was correct in observing that the objection at a belated stage could not be allowed.

9. This Court is also of the opinion that once the two witnesses had been examined in chief and the petitioner had also partly cross-examined one of the witnesses, then, the objection taken at that stage should not come in the way of complete examination of PW1 and PW2. Moreover, no prejudice would be caused to the petitioner as the relevance of the evidence given by both the witnesses would be considered at the time of final arguments. The application apparently had been filed to delay the election petition, as any delay with respect to the same could make the election petition itself infructuous.

10. Reliance sought to be placed upon by the counsel for the petitioner in the case of ***Jasvir Singh and another*** (Supra) also does not in



any way further the case of the petitioner and rather goes against the petitioner. A perusal of the facts of the said case would show that a handwriting expert was examined and it is thereafter that the plaintiff therein had submitted his affidavit as PW6 and affidavit of a witness as PW7. The argument was raised on behalf of the defendant therein that the plaintiff had misled the trial Court by allowing the affidavits of PW6 and PW7 to be brought on record, when the only option left with him as per the directions given by the Court in an earlier revision petition, i.e., CR-3595-2014, was to give the details of any other witnesses which were necessary and it was the plaintiff's own assertion that apart from handwriting expert, there was no other evidence necessary. However, in spite of the above, the Coordinate Bench of this Court in para 6 of the judgment, had stated that the examination of the plaintiff was essential and thus, the affidavit of PW6 as well as affidavit of PW7 was ordered to be received and the closure of the evidence by the plaintiff on the application of the defendants therein was set aside and the evidence of two witnesses including the plaintiff was taken into consideration.

11. A perusal of the application (Annexure P-4) would show that the direction sought by the petitioner was to direct the respondent to appear and examine herself. No judgment has been cited on behalf of the petitioner to show that an application can be moved by a party directing the other party to examine themselves. Even the judgment passed in the case of *Jasvir Singh and another* (Supra) was a case wherein the plaintiff had given his affidavit as PW6 and it was only at that stage, that an argument was raised that he should have been examined first. In the present case, it is not in

dispute that the respondent in the case has not been examined till date and thus, the question of petitioner directing the respondent to be examined does not arise. Moreover, as has been stated hereinabove in the case of ***Jasvir Singh and another*** (Supra), even the evidence of the plaintiff as PW6 was taken into consideration, although, the plaintiff was examined subsequent to the other witnesses, including the handwriting expert.

12. Keeping in view the abovesaid facts and circumstances, the impugned order dated 07.09.2024 (Annexure P-6) is in accordance with law and deserves to be upheld and the present revision petition being meritless, deserves to be dismissed and is accordingly, dismissed.

18.09.2024
Pawan

(VIKAS BAHL)
JUDGE

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