



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

205

CR No.1776 of 2023 (O&M)

Date of Decision :21.05.2025

M/s Ram Gopal Brij Bhushan and another

.....Petitioners

Versus

Gurpratap Singh

..... Respondent

CORAM: HON'BLE MR.JUSTICE VIKRAM AGGARWAL

Present : Mr. Paramveer Singh, Advocate for the petitioners.

**Mr. Yugank Goyal, Advocate for
Mr. Shantanu Bansal, Advocate for the respondent.**

VIKRAM AGGARWAL, J. (Oral):

The instant revision petition assails the order dated 04.10.2022 (Annexure P-1), passed by the Court of Additional Civil Judge (Sr. Divn.), Guhla, District Kaithal, vide which the application filed by the petitioners-plaintiffs for tendering an additional affidavit in examination-in-chief was rejected.

A suit (Annexure P-2) for recovery of Rs. 14,71,673/- was filed by the petitioners-plaintiffs against the respondent-defendant. Written statement (Annexure P-3) was filed by the defendant denying the averments made in the suit. Replication (Annexure P-4) was filed by the plaintiffs denying the averments made in the written statement by reiterating those made in the plaint.

After framing of issues, the evidence of the plaintiffs commenced. During the course of evidence, Krishan Kumar-PW2 and Nand Lal-PW3 tendered their affidavits in examination-in-chief on 18.03.2021. Krishan



Kumar-PW2 was subsequently cross-examined on 21.09.2021 and 23.09.2021. After concluding the cross-examination of Krishan Kumar-PW2, the petitioners-plaintiffs moved an application (Annexure P-7) seeking permission to tender additional affidavit in further cross-examination-in-chief. The affidavit (Annexure P-6) stated that while preparing the initial affidavit, it had wrongly been averred that the *bahi* entry dated 02.06.2014 of Rs. 5,00,000/- was in the hand of Krishan Kumar whereas actually it was in the hand of Nand Lal-PW3. It was, therefore, sought to be stated that all entries except the entries of Rs.3,00,000/- and Rs.5,00,000/- were in the hand of Krishan Kumar and the entries of Rs.3,00,000/- and Rs.5,00,000/- were in the hand of Nand Lal. The application was opposed. By way of the impugned order, the said application was dismissed leading to the filing of the instant petition.

I have heard learned counsel for the parties.

Learned counsel for the petitioners-plaintiffs submits that the trial Court erred in rejecting the application. He submits that in terms of the provisions of Order XVIII Rule 4 of the Code of Civil Procedure, 1908 (for short 'CPC'), more than one affidavit can be been submitted. He further submits that since the cross-examination of Nand Lal-PW3 was yet to commence, he was well within in his right to submit an additional affidavit in his cross-examination. He submits that due opportunity would be granted to the respondent to cross-examine Nand Lal-PW3 and no prejudice would be caused to him. In support of his contentions reliance is placed upon **Nirali Ashwin Negandhi Vs. Jayantilal Investments and Anr.** Law Finder Doc ID # 2184319, **Banganga Cooperative Housing Society Ltd. Vs. Vasanti Gajanan Nerurkar** 2015(34) R.C.R.(Civil) 911, **Batsiya and Ors. Vs.**



Ramgovind and Ors. 2021 AIR (Madhya Pradesh) 153, The State of Manipur Represented By the Secretary (Home), Government of Manipur, Imphal and Ors Vs. Shri P. Thoiba Singh, 2018(183) AIC 834.

Per Contra, learned counsel representing the respondent submits that there is no illegality in the impugned order. He submits that once it was admitted in the cross-examination by Krishan Kumar-PW 2 that the entry of Rs. 5,00,000/- was not in his hand and was, in fact, in the hand of Nand Lal-PW3, the application for tendering an additional affidavit was moved with a view to fill-up the lacuna. He submits that such an act was not permissible and that the trial Court rightly declined the application, for, allowing the application would gravely prejudice the rights of the respondent-defendant.

I have given my thoughtful consideration to the issue in hand.

At the first blush, it appears that nobody should be permitted to fill-up the lacuna. However, if the matter is examined in its totality, other aspects of the matter come to the fore. Procedure, it is said, is the handmaid of justice. Section 137 of the Indian Evidence Act, 1872 provides for examination-in-chief, cross-examination and re-examination. It also provides that however, if a new matter by permission of the Court is introduced in re-examination, the adverse party may further cross-examine the witness. Of course, the stage of re-examination would arrive after cross-examination is conducted. However, a provision does exist.

In the case of **Naresh Arora Vs. Surinder Kumar (deceased) through his LRs 2023(1) R.C.R. (Rent) 626**, a Co-ordinate Bench held that once an affidavit in evidence is filed and the examination-in-chief has begun, there is no impediment for the deponent to file a fresh affidavit. It was held



that Order XVIII Rule 4 CPC does not limit itself to a single affidavit. No doubt, in that case, no contradictory plea had been raised. However, successive affidavits had been filed. The Co-ordinate Bench relied upon various judgments of different High Courts while arriving at the said conclusion:-

8. In my view, upon the expiry of respondent/original-landlord Surinder Kumar, respondent no.iv is entitled to seek eviction of the petitioner in her own behalf, especially in view of the fact that the original landlord had already issued General Power of Attorney in her favour, and had asserted the requirement of respondent No. iv in respect of the demised premises in the first instance itself. It has also come on record that all the other legal heirs of the original landlord/respondents herein, admit the need of the said respondent no.(iv) and admit that she requires the demised premises to open her boutique in view of the fact that she is widow and has two young children to bring up. Moreover, original landlord had already given GPA in favour of respondent no. (iv) in his lifetime to pursue the ejectment petition. In this regard, support may be drawn from judgments rendered by various High Courts in *Banganga Cooperative Housing Society Ltd., Mumbai v. Vasanti Gajanan Nerukar*, Law Finder Doc Id # 700908; *Rajesh Varma v. Aminex Holdings and Investments*, Law Finder Doc Id # 226204; and *Raghbir Singh v. Parvesh Kumar*, Law Finder Doc Id # 492159, wherein it has been inter-alia, held that once, an 'Evidence Affidavit' is filed, and the examination-in-chief of the deponent has begun, there is no impediment and it may be permissible for the deponent to file a further affidavit since Order 18, Rule 4 CPC does not limit itself to a single affidavit; and that there was nothing in the amended CPC, which precludes the Court from recording further examination-in-chief of the plaintiff. In case of *Raghbir Singh (supra)*, this Court has held as follows:

“10. No doubt that the landlord himself had not appeared in the witness box in support of his case that the demised premises is required for the bona fide requirement of his son but the son of the landlord, namely, Gurmeet Singh, had appeared as PW1 for himself and as Special Power of Attorney of his father and has stated that his father is an old man and he is well conversant with the facts of the petition.



The said shop was required by him for his personal use. He is matriculate, handicapped, having defect in his left eye and left leg and it is difficult for him to do other business except for running a shop. He has categorically averred that he required the shop for his own occupation and is neither occupying nor vacated any such shop in the urban area of Municipal Council, Kharar without any sufficient cause after the commencement of the Act.

13. In the present case also, PW1 has categorically stated that his father is an old person and is doing nothing. He is well conversant with the facts of the case which means that he is managing the affairs of the family, therefore, the argument raised by counsel for the tenant that the landlord should have entered into the witness box as his own witness instead appearing through his Special Power of Attorney to prove his bona fide necessity would not be of any consequence because the bona fide necessity is also not only of the landlord but also of his son, as pleaded in the petition and also in the affidavit Ex.PW1/A, tendered in examination-in-chief of the son of the landlord, who has categorically alleged that there is no other shop in his occupation nor has vacated any such shop in the urban area concerned without any sufficient cause after the commencement of the Act”.

A similar view was taken by the Bombay High Court in the case of **Nirali Ashwin Negandhi and Banganga Cooperative Housing Society Ltd. (supra)** and Madhya Pradesh High Court in the case of **Batsiya and Ors. (supra)**.

Reverting to the facts of the present case, concededly, in the affidavit tendered by both Krishan Kumar-PW2 and Nand Lal-PW3 it had been stated that all *bahi* entries except the entry of Rs.3,00,000/- were in the hand of Krishan Kumar. Concededly, Krishan Kumar stated in his cross-examination that the entry of Rs. 5,00,000/- was not in his hand and was in the hand of Nand Lal. Also, the application for furnishing an additional affidavit



was filed on conclusion of the cross-examination of Krishan Kumar-PW2. One angle would be to straightaway reject the application stating that the petitioners-plaintiffs are attempting to fill-up the lacuna. Another angle to look at the whole issue is to provide an opportunity to furnish an additional affidavit, keeping in view the fact that cross-examination of the petitioners has not commenced. The petitioners, would however, not be permitted to withdraw the previous affidavit. The respondent-defendant would have adequate opportunity to cross-examine the petitioners as regards the contradictions etc. Further, it would be for the petitioners to prove their own case by leading cogent evidence.

Procedure being the handmaid of justice, as has been noted, should be used to advance the cause of justice rather than to scuttle it.

That being so, I deem it appropriate to allow the application moved by the petitioners-plaintiffs. Accordingly, the present revision petition is allowed. The impugned order dated 04.10.2022 (Annexure P-1), passed by the Court of Additional Civil Judge (Sr. Divn.), Guhla, District Kaithal, and the application moved by the petitioners-plaintiffs seeking permission for tendering an additional affidavit by way of further examination-in-chief is allowed. The same shall, however, be subject to payment of costs of Rs.20,000/- to the respondent-defendant.

(VIKRAM AGGARWAL)
JUDGE

21.05.2025

Manoj Bhutani

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