

CR-6882-2024

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2026:PHHC:047728



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR-6882-2024

Date of decision : 25.03.2026

Gurlal Singh Danewalia

... Petitioner

Versus

Daljit Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Rajan Bansal, Advocate
for the petitioner.

Mr.Pawan Kumar, Senior Advocate with
Ms.Vidushi Kumar, Advocate and
Mr.Nitesh Gautam, Advocate
for respondent no.1.

Mr.Sandeep Singh, AAG, Punjab
for respondents no.2 to 5.

VIKAS BAHL, J.(ORAL)

CHALLENGE IN THE PRESENT REVISION PETITION

1. This is a Civil Revision Petition filed under Article 227 of the Constitution of India for setting aside the impugned common order dated 19.09.2024 (Annexure P-7) passed by the Civil Judge (Jr.Div.), Bathinda, vide which an application dated 11.07.2024 filed by the petitioner-plaintiff for discarding the examination in chief of DW-9 Daljit Singh (defendant no.1) has been dismissed and the second application dated 24.07.2024 filed



by respondent no.1-defendant no.1 under Order 18 Rule 3A CPC for grant of permission to examine himself as a witness in the case has been allowed.

ARGUMENTS ON BEHALF OF THE PETITIONER

2. Learned counsel for the petitioner has submitted that in the present case, the suit for declaration, mandatory injunction and permanent injunction was filed by the petitioner-plaintiff in January, 2015 and the written statement was filed in the case on 16.05.2015 and thereafter the plaintiff evidence started on 17.12.2015 and was closed on 15.11.2017. It is submitted that the defendants started their evidence on 28.11.2017 and after examining eight witnesses, they sought to examine DW-9 Daljit Singh, who is defendant no.1 in the main suit, without first having sought permission to examine the said witness at a later stage. It is submitted that the same is in violation of the mandatory provision of Order 18 Rule 3A CPC which specifically requires that in case a party himself wishes to appear as a witness, then, he shall appear before any other witness on his behalf is examined, unless the Court, for the reasons to be recorded, permits him to appear as his own witness at a later stage. It is submitted that the abovesaid provision necessary requires the party to first seek permission to be examined at a later stage and the said permission cannot be sought at a subsequent stage after several witnesses have been examined. It is submitted that thus, the impugned order deserves to be set aside and the examination-in-chief of DW-9 Daljit Singh (defendant no.1) deserves to be discarded.

**ARGUMENTS ON BEHALF OF RESPONDENT NO.1**

3. Learned senior counsel for contesting respondent no.1, on the other hand, has submitted that the trial Court had recorded relevant reasons for grant of permission under order 18 Rule 3A CPC for the defendant to be examined at a later stage. It is further submitted that defendant no.1 had suffered brain hemorrhage and even had placed on record the certificate from the hospital including the CT scan to prove the said aspect. It is submitted that DW-9 had appeared before the trial Court and was examined-in-chief on 29.05.2024 and at that stage, the counsel for the petitioner-plaintiff had not raised any objection with respect to the said witness being examined after the other eight witnesses had been examined, rather had sought an adjournment for cross-examining the said DW-9. It is submitted that only subsequently on 11.07.2024, the present application had been moved as an afterthought.

4. Learned senior counsel for respondent no.1 has further submitted that it has been held by the Full Bench of this Court in the case of ***Amritsar Improvement Trust vs. Ishri Devi*** reported as ***1979 PLR 354*** that the provision of Order 18 Rule 3A is directory in nature and there is nothing inflexible in Rule 3A with regard to the stage of securing the permission and has submitted that thus, the arguments raised on behalf of the petitioner to the effect that permission has to be taken prior to the other witnesses being examined is in the teeth of the judgment of the Hon'ble Full Bench. It is submitted that the Co-ordinate Bench of this Court in the case of ***Mita vs.***



Balbir and others reported as ***2025 NCPHHC 34614*** has further observed that even in a situation where no separate application has been moved for seeking permission, the same would not be sufficient to non suit the witness/ party, moreso, when an application to disallow the witness from being examined has been rejected by the trial Court. Learned senior counsel for respondent no.1 has also placed reliance upon the judgment of this Court in the case of ***Ram Chand (since deceased) through LRs vs. Swaran Kaur and others*** reported as ***2025 NCPHHC 23269*** in support of his arguments.

ANALYSIS AND FINDINGS

5. This Court has heard learned counsel for the petitioner as well as learned senior counsel for respondent no.1 and has perused the paper book and finds that the impugned order is in accordance with law and deserves to be upheld and the present revision petition deserves to be dismissed for the reasons stated hereinafter.

6. The trial Court while dismissing the application filed by the petitioner-plaintiff for discarding the examination-in-chief of DW-9 Daljit Singh and while allowing the application filed by defendant no.1 under Order 18 Rule 3A CPC for grant of permission to examine himself as a witness after having examined other witnesses had given several valid reasons which are being enumerated hereinafter.

- i) The trial Court had accepted the plea of defendant no.1 that the said defendant had suffered brain hemorrhage and had undergone surgery as he had placed on record the CT scan and

2026:PHHC:047728



as per the documents produced by the said defendant no.1 from SPS Hospital, Ludhiana, he was treated in the said hospital on 17.12.2017.

ii) It was observed that no prejudice had been caused to the plaintiff as nothing had come on record that DW-9 had been examined to fill any lacuna. It was observed that no such alleged lacuna had been highlighted on behalf of the plaintiff.

iii) It was further observed that the witnesses who had been examined were primarily formal and summoned witnesses and had been cross-examined at length by the plaintiff. It was observed that DW-1 Sukhdev Singh was the Sub Registrar, who had proved the endorsement of his signatures on Ex.D1, DW-3 Paramjit Kaur was a Clerk, who had brought summoned record Ex.D1, DW-4 Vishal Garg was SDE and even DW-8 Amulya Garg was SDE and they had been examined by defendants no.2 to 5 and had deposed regarding transfer of the property in favour of defendant no.1 Daljit Singh. Even with respect to DW-6 it was stated that the said witness Randhir Singh, who was handwriting and finger print expert, had proved his report Ex.DW6/1 and digital photographs Ex.DW6/2 to Ex.DW6/16. DW-7 was stated to be Ajay Kumar, who had proved entry Ex.DW7/A in the assessment register. With respect to DW-2 Harinder Singh it was stated that said

2026:PHHC:047728



witness had only stated qua possession of defendant no.1 over the suit property and DW-5 Dr.Inderdeep Singh was stated to have identified the signature of his father late Sardar Mahinder Singh on the original document Ex.DW5/A. It was observed that said witnesses except DW-4 had been cross-examined at length and the plaintiff had failed to bring on record any lacuna which defendant no.1 was alleged to be filling up by examining DW-9 subsequently.

iv) It was further observed that at the time when the said defendant no.1-Daljit Singh had presented himself for examination-in-chief as DW-9, the learned counsel for the petitioner-plaintiff had not taken any objection to the effect that he is being examined subsequent to the other witnesses, rather learned counsel for the petitioner-plaintiff had sought an adjournment to cross-examine said DW-9. The order dated 29.05.2024 which duly proves the said aspect is reproduced hereinbelow:-

*“Present: Sh. SM Goyal Adv., Ld. counsel for the plaintiff.
Sh HS Chahal Adv., Ld. counsel for the defendants
Sh MS Sidhu, Ld GP for the defendants no. 2 to 5.
Sh MS Sidhu, Ld GP has filed memo of appearance of
defendants no. 2 to 5.*

DW9 Daljit Singh is present and examined-in-chief. His cross-examination is deferred on request of Ld counsel for the plaintiff. This is the 48th effective opportunity which has been availed by the defendant. Case is adjourned to 20.10.2022 for cross examination of DW9

2026:PHHC:047728



and remaining evidence of the defendant, subject to last and final opportunity. It is clarified to both the parties that since the present case is more than 9 years old and falls under the action plan category. Hence, no further opportunity shall be granted to either of the parties.

Date of Order: 29.05.2024

*(Sumit Garg)
CJJD/Bathinda
UID NO.PB00608”*

It was thus observed that it was not open to the plaintiff to now state that the examination-in-chief of defendant no.1 could not be recorded at that stage.

7. The abovesaid reasons given by the trial Court are valid reasons and the same have not been shown to be perverse or illegal. Moreover, the Full Bench of this Court in the case of ***The Amritsar Improvement Trust (supra)*** had observed that the provision of Order 18 Rule 3A is directory in nature and that the Court is not denuded of its jurisdiction to grant permission when an application is made for good reasons even at a later stage. It was further observed that there appears to be nothing inflexible in Rule 3A with regard to the stage of securing the permission and thus, it was held that such permission may also be sought at a later stage and in case the Court finds merit in the same, it would not be debarred from acceding to such a prayer. It was however observed in the judgment of the Full Bench that the Court must record its reason for doing so.

8. The said judgment of the Full Bench has been followed by the Co-ordinate Bench of this Court in the case of ***Mita (supra)*** in which case a similar argument raised on behalf of the petitioner, as is sought to be raised



before this Court was rejected by observing that even rejection of the application filed by the party to not permit the witness to appear subsequently would also amount to grant of permission to the other side to appear as a witness. The relevant portion of the said judgment is reproduced herienbelow:-

“14. The first issue to be addressed is as regards no permission having been sought by the respondents-plaintiffs for appearing as witnesses. In the considered opinion of this Court, the rejection of the application filed by the petitioner-defendant amounts to permission to the respondents-plaintiffs to appear as witnesses. No doubt, no separate application was moved by them seeking permission and they simply wanted to appear as witnesses. However, this alone would not be sufficient to non-suit them especially when an application to disallow them from appearing as witnesses was moved and the same was rejected.

*15. Now coming to the issue as to whether the provisions of Order XVIII Rule 3-A CPC are mandatory or directory, the judgment of the Full Bench of this Court in the case of **The Amritsar Improvement Trust versus Ishri Devi** (supra) is very clear. It lays down in no uncertain terms that the provision is directory;*

10. Coming now to precedents, in view of the fact that Jagannath Nayak's case (supra) has itself been overruled by a Division Bench of its own court, it would obviously be wasteful to examine or refute its rationale. It suffices to mention that some reliance was placed on the legislative history of the provision and in particular the report of the Law Commission for taking that view, which was considered and repelled in M/s Kwaliti Rastaurant, Amritsar's case (supra) to which a detailed reference can be made on this specific point. Again it would be wasteful to tread the same ground over again and agreeing with the reasoning of the Division Bench in Maquni Devi's case (supra) and the Allahabad view in Mohd. Aqil's case (supra), I would hold that the provisions of rule 3-A are directory in nature and the court is not denuded of jurisdiction to grant permission when an



application therefore is made for good reasons even at a later stage.

11. The matter is capable of being viewed from another angle as well. Apart from the issue of the rule being mandatory or directory, it is clear that the command laid therein regarding the party appearing before his other witnesses has been itself provided with an exception where permission to do otherwise can be accorded by the court for adequate reasons. When the provision itself provides both the mandate and an exception thereto, the one cannot be divested from the other. The significant thing to highlight here is that the true question at issue is not with regard to the ordinary rule that party shall appear before any witness on his behalf appears, but pertains to the stage at which such permission to appear at a later stage is to be secured. Whilst the ordinary rule with the exception thereto may normally be adhered to there appears to be nothing inflexible in rule 3-A with regard to the stage of securing the permission as such. I would, therefore, hold that such permission may also be sought at a later stage and if the court finds merit in the same it would not be debarred from acceding to such a prayer. Equally it deserves to be recalled that the Legislature has itself prescribed a certain safeguard by laying down the requirement or the recording of reasons for doing so.

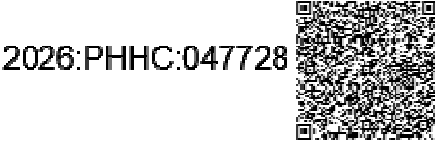
12. Before parting with this judgment, however, a note of caution must be sounded. Holding that the aforesaid rule is directory and the permission may be granted at a later stage, is not to say that the mandate of the legislature in this context is to be easily disregarded or lightly deviated from. It is plain that as a normal rule the legislature requires the testimony of the party to be recorded first and the rationale there is not far to seek. Apparently in order to prevent an easy deviation from the rule, it has been laid down that the court shall record its reasons for doing so. It is to be hoped that the trial Courts in whom primarily the discretion has been vested, would keep both the letter and the spirit of the rule in mind before according permission thereunder



in exceptional circumstances, and not whittle the same down by allowing too easy and indiscriminate deviation therefrom.

9. In the present case, as has been observed hereinabove, valid reasons have been given by the trial Court to grant permission and thus, the requirement under Order 18 Rule 3 A has been met.

10. The Hon'ble Supreme Court in the case of "***Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil***", reported as ***(2010) 8 Supreme Court Cases 329***, had observed that the High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of court or tribunal subordinate to it. It was also observed in the said judgment that a statutory amendment with respect to Section 115 of the Civil Procedure Code does not and cannot cut down the ambit of High Court's power under Article 227, but at the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court. It was also observed that the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline.



11. Keeping in view the above said facts and circumstances, the present revision deserves to be dismissed and is accordingly dismissed and the common impugned order is upheld.

(VIKAS BAHL)
JUDGE

March 25, 2026.
Davinder Kumar

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