IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-5770-2024 (O&M)
Decided on : 11.03.2025

Mita

..... Petitioner

Versus

Balbir and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

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Present : Mr. Sanchit Punia, Advocate
for the petitioner.

Mr. Naresh Kaushik, Advocate and
Mr. K.S.Dhamora, Advocate
for respondents No.1 and 2.

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VIKRAM AGGARWAL, J (ORAL)

CM-3892-CII-2025

Today, the case is fixed for arguments on the instant application preferred under Section 151 CPC for directing the trial Court to adjourn the hearing of the civil suit beyond the date fixed by this Court.

Learned counsel for the parties are *ad idem* that the main case itself be heard.

Accordingly, the hearing in the main case is pre-poned from 14.05.2025 to today itself.

The application accordingly stands disposed of.

CR-5770-2024

The present revision petition is directed against the order dated

20.09.2024 (Annexure P-7), passed by the Court of learned Civil Judge (Junior Division), Hisar vide which the application moved by the petitioner and proforma respondents No.3 to 5 (hereinafter referred to as 'the petitioner-defendant') under Order XVIII Rule 3-A of the Code of Civil Procedure (for short 'CPC') for disallowing respondents No.1 and 2-plaintiffs (hereinafter referred to as 'the respondents-plaintiffs') from appearing as witnesses was rejected.

2. The facts, as emanating from the revision petition, are that the respondents-plaintiffs filed a suit for possession by way of specific performance of registered agreement to sell dated 08.07.2016 in respect of agricultural land measuring 30 kanals 11 marlas (fully described in the plaint) (hereinafter referred to as 'the disputed land'), situated at Village Chuli Bagrian, Tehsil Adampur, District Hisar (Annexure P-1) against the petitioner-defendant.

3. The suit was opposed by way of a written statement (Annexure P-2). Issues were initially framed on 18.05.2018 and were subsequently re-framed on 18.03.2021. The respondents-plaintiffs examined three witnesses. However, when the respondents-plaintiffs intended to appear as witnesses, an application under Order XVIII Rule 3-A CPC (Annexure P-5) was moved by the petitioner-defendant to disallow the respondents-plaintiffs from appearing as witnesses. The said application was opposed by way of a reply (Annexure P-6). The application was dismissed by way of the impugned order dated 20.09.2024, leading to the filing of the present revision petition.

4. I have heard learned counsel for the parties.

5. Learned counsel for the petitioner has strenuously urged that the

impugned order is not sustainable. Reference has been made to the provisions of Order XVIII Rule 3-A CPC and it has been submitted that the respondents-plaintiffs should have appeared as witnesses in the first instance and if they had not so appeared, they should have moved an application seeking permission of the Court to appear as witnesses which was also not done. However, an application was moved by the petitioner-defendant to disallow the respondents-plaintiffs from appearing as witnesses which has been dismissed on flimsy grounds.

6. Learned counsel submits that the reasons given by the respondents-plaintiffs in reply to the application moved by the petitioner-defendant were devoid of logic and no valid reason was given for non-examination of the respondents-plaintiffs before examination of three witnesses. It has been submitted that the respondents-plaintiffs intend to fill up the lacunae in the case which is not permissible. In support of his contentions, learned counsel has placed reliance upon the judgments of Bombay High Court (Nagpur Bench) in ***Sanj Dainik Lokopchar versus Gokulchand Govindlal Sananda (2018) 6 ALLMR 393*** and ***Anju Toshniwal and Ors. versus Expat Properties India Ltd. (2019) 5 AIR BomR 726.***

7. On the other hand, learned counsel for the respondents-plaintiffs has submitted that there is no illegality in the impugned order. He submits that the provisions of Order XVIII Rule 3-A CPC are directory in nature and, therefore, the Court concerned was well within its rights to permit the respondents-plaintiffs to appear as witnesses. It was submitted that even otherwise, the respondents-plaintiffs should not be restrained from appearing as witnesses on technicalities. Learned counsel has referred to a judgment of

the Full Bench of this Court in the case of ***The Amritsar Improvement Trust versus Ishri Devi 1979 PLR 354*** and the judgments of Coordinate Benches of this Court in the cases of ***Gurmail Chand versus Ashok Verma 2004 (3) R.C.R. (Civil) 164*** (Law Finder Doc ID # 72186) and ***Mahabir Jain Kanya Pathshala Trust, Bhiwani versus Daya Krishan 2010 (3) R.C.R. (Civil) 345*** (Law Finder Doc ID # 227895).

8. I have considered the submissions made by learned counsel for the parties.

9. Order XVIII Rule 3-A CPC lays down as under:-

> ***[3A. Party to appear before other witnesses.—Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reasons to be recorded, permits him to appear as his own witness at a later stage.]***

10. 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.

11. 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 Kwality 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.***
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> ***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.***
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> ***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.***

12. The Hon'ble Full Bench apart from holding that the provisions are directory in nature and the Court is not denuded of the jurisdiction to grant permission when an application is, therefore, made even at a later stage, also held that such a permission could be sought at any stage and not merely at the initial stage. Still further, a note of caution was also sounded by the Hon'ble Full Bench stating that the trial Court in whom primarily the

discretion has been vested, would keep both the letter and 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 therefore.

13. This view was reiterated by a Coordinate Bench of this Court in ***Mahabir Jain Kanya Pathshala Trust, Bhiwani versus Daya Krishan's case*** (supra). This revision petition had arisen out of an order on an application moved by the defendants therein that the plaintiff should first examine himself as a witness. This application was contested by filing a reply and by way of the impugned order, the application was dismissed. The Coordinate Bench while dealing with the issue, upheld the impugned order while relying upon the judgment of the Supreme Court of India in the case of ***Kishore Chand v. Life Insurance Corp. of India, 2001 (2) RCR (Civil) 200***.

> ***12. Thus, even if permission was not taken by the respondents herein to appear as own witness before the Court below before his other witnesses have been examined, it does not debar to seek permission even now by moving an appropriate application. Insofar as various precedents cited by learned counsel for the petitioners herein are concerned, in the case of Pargan Singh (Supra), it has been held that though provisions of Order 18, Rule 3A of Civil Procedure Code are not mandatory but being directory require to be followed because by doing so, lot of evidence is cut short. In the case of N.C.Kaladharan(Supra), the appellant did not wish to appear as a witness in his suit as a result of which question of the priority of his examination at first instance loses its credence. In the case of Harnam Singh (Supra), the evidence of defendant's witnesses were over, after which the defendant wanted to examine himself as his own witness, which was not***

> ***allowed by the trial Court on the ground that he should have examined himself first, but the said order was set aside on the ground that the Court should have allowed the defendant to come in witness box as he was present and did not seek any further date. The said order was, however, passed by burdening the defendants with costs. In the case of Kishore Chand (Supra), the petitioner did not appear as his own witness at the first instance and was not allowed to suffer on account of lapse on his part. It was held that technicalities of law should not be allowed to hamper the course of administration of justice and as such, revision was allowed subject to payment of costs of Rs. 1000/-.***
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> ***13. Thus, the sum and substance of the above discussion is that the provisions of Order 18, Rule 3A of Civil Procedure Code are not mandatory but are directory and the petitioner can seek permission of the Court even at a stage subsequent to the examination of some of his witnesses to appear as his own witness at a later stage.***

14. Reverting once again to the facts of the present case, in reply to the application filed by the petitioner-defendant, the respondents-plaintiffs took a stand that the plaintiffs had come to the Court to appear as witnesses but on the asking of the counsel for the defendants, it was mutually decided that the other summoned witnesses would be examined first after which the plaintiffs would appear. It was also averred that without examining the plaintiffs, the case would not be proved. No rejoinder was filed to this reply meaning thereby that the petitioner-defendant did not counter the averment that it had mutually been decided that the plaintiffs would be examined at a later stage. The trial Court decided the application by holding that leading evidence was an important and essential facet of trial and restricting the

plaintiffs from giving evidence to support their version would amount to partly shutting out evidence. It was held that every case should be decided on merits and not on default. Though, on the face of it, it appears that adequate reasons were not given by the trial Court while rejecting the application, if we examine the matter in its entirety, keeping in view the averments made in the application moved by the petitioner-defendant, the reply thereto and the impugned order, the only conclusion which can be arrived at is that there was no reason for the trial Court to disallow the respondents-plaintiffs from appearing as witnesses. It was no where explained in the application nor has it been pointed out during the course of arguments as to what lacunae the respondents-plaintiffs were attempting to fill up by appearing as witnesses at a later stage. The impugned order, therefore, does not suffer from any illegality or jurisdictional error warranting interference.

In view of the above, I do not find any merit in the present revision petition and the same is accordingly dismissed.

Pending application(s), if any, stand(s) disposed of accordingly.

(VIKRAM AGGARWAL)
JUDGE

11.03.2025
mamta

Whether speaking/reasoned Yes/No
Whether Reportable Yes/No