

(2010) 12 P&H CK 0556

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 8177 of 2010 (O and M)

Prithipal Singh

APPELLANT

Vs

Surinder Kaur and
Others

RESPONDENT

Date of Decision: Dec. 16, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 18 Rule 4
- Constitution of India, 1950 - Article 227

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

L.N. Mittal, J.

CM No. 31915-CII of 2010

Allowed as prayed for.

Main Case.

1. Prithipal Singh legal representative of the original Plaintiff since deceased has invoked the jurisdiction of this Court under Article 227 of the Constitution of India challenging order dated 08.12.2010 Annexure P-1 passed by learned Civil Judge (Junior Division), Ludhiana. Defendant No. 3-Gurbir Singh appeared as DW-6 and his part examination-in-chief was recorded on 08.11.2001. Thereafter while appearing in the witness box to complete his testimony, Defendant No. 3 as DW-6 wanted to tender his affidavit of examination-in-chief in accordance with Order 18 Rule 4 of the CPC (in short, CPC). The said prayer was opposed by counsel for the Plaintiff. Learned Trial Court vide impugned order Annexure P-1 allowed the said prayer of Defendant No. 3 and permitted him to furnish his affidavit as examination-in-chief. Feeling aggrieved, legal representative of Plaintiff has filed the instant revision

petition.

2. I have heard learned Counsel for the Petitioner and perused the case file.

3. Learned Counsel for the Petitioner vehemently contended that Order 18 Rule 4 CPC does not permit splitting of examination -in-chief i.e part of it being recorded orally in Court and part of it being tendered by way of affidavit. Reliance in support of this contention has been placed on judgment of Bombay High Court in the case of Sharad Wasudeorao Kalmegh v. Leena Shara Kalmegh 2005(2) ALLMR 662.

4. I have carefully considered the aforesaid contention, but the same cannot be accepted. Judgment in the case of Sharad Wasudeorao Kalmegh (supra) is distinguishable. In that case, the Petitioner appeared twice in the witness box and his examination-in-chief was recorded partly on two dates i.e 12.04.2003 and 03.06.2003 by way of oral evidence and it was thereafter that he wanted to produce affidavit of examination-in-chief. When the Petitioner in that case appeared on two occasions and made part examination-in-chief orally, Order 18 Rule 4 CPC as it now exists, permitting examination-in-chief on affidavit, was in existence, but in spite thereof, the Petitioner instead of tendering his affidavit as examination-in-chief under the said provision opted to make his deposition in examination-in-chief orally instead of tendering affidavit. In this view of the matter, request of the Petitioner was disallowed. In the instant case, however, Defendant-Respondent No. 3 appeared in the witness box on 08.11.2001 when his part examination-in-chief was recorded orally. At that time, Order 18 Rule 4 CPC as it now exists was not in existence and at that time, there was no provision for tendering affidavit as examination-in-chief. Consequently, at that time, Defendant No. 3 had no option, but to make his deposition in examination-in-chief orally as per the then existing provision of law. However, now when Defendant No. 3 had to make his further examination-in-chief, Order 18 Rule 4 CPC as it now exists has come in existence making provision for examination-in-chief by affidavit. Consequently, benefit of the said provision cannot be declined to Defendant No. 3. On the other hand, this provision has been introduced by amendment to save time of the Court in recording examination-in-chief orally. Case of Sharad Wasudeorao Kalmegh (supra) is thus distinguishable because in that case, in spite of the existing provision, the Petitioner opted to make examination-in-chief orally, but in the instant case, it is not so. Secondly, in the case of Sharad Wasudeorao Kalmegh (supra), trial Court rejected the prayer of the Petitioner for tendering affidavit for further examination-in-chief, but in the instant case, the trial Court has allowed the prayer of Defendant No. 3 to this effect. The impugned order cannot be said to be illegal or suffering from jurisdictional error so as to warrant interference in exercise of revisional jurisdiction. Thirdly, even in the Sharad Wasudeorao Kalmegh (supra), it was simply observed that the evidence of the Petitioner having been partly recorded, in the normal course, it is appropriate that the trial Court continued with recording of evidence by way of examination-in-chief and cross-examination in the Court itself. Thus

expression in the "normal course" was used in the aforesaid judgment. In other words, it has not been laid down in the said judgment that evidence of a party having been recorded partly, cannot thereafter be recorded by affidavit of examination-in-chief.

5. In addition to the aforesaid, it has to be noticed that the Petitioner has not suffered any prejudice by the impugned order. Learned Counsel for the Petitioner is unable to point out any prejudice that would result to the Petitioner from the impugned order or in other words, from examination-in-chief of Defendant No. 3 being recorded by way of affidavit as per provision of Order 18 Rule 4 CPC.

6. For the reasons aforesaid, I find no merit in the instant revision petition which is accordingly dismissed in limine.