

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

CR-2065-2021

Pronounced on : 01.08.2023

Reserved on 17.07.2023

Ravinder Singh

..... Petitioner

Versus

Amrik Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Mr. Vikram Jeet Singh, Advocate
for the petitioner.

None for the respondent.

VIKRAM AGGARWAL, J

1. By way of the present revision petition preferred under Article 227 of the Constitution of India, the petitioner assails the order dated 06.09.2021 (Annexure P-3), passed by the Civil Judge (Junior Division), Rupnagar vide which the respondent-plaintiff was permitted to give up witness namely Harnek Singh (PW2) inspite of his examination-in-chief having been recorded.

2. The facts, briefly put, are that the respondent-plaintiff Amrik Singh filed a suit for possession of house measuring 2 Biswa 8 Biswansi (fully described in the plaint), situated in Village Fatehpur, Tehsil Chamkaur Sahib, District Rupnagar by way of specific performance of agreement to sell dated 11.01.2016. It was the case of the respondent-plaintiff that the present petitioner-defendant had agreed to sell his house to the respondent-plaintiff for a consideration of ₹2,25,000/- but had backed out of the same. In the alternative, recovery of

Rs.3,20,000 being double the amount of the earnest money of Rs.1,60,000/-was sought.

3. The suit was opposed by the petitioner-defendant. In the written statement (AnnexurP-2), it was pleaded that no such agreement to sell had been executed and that infact a sum of Rs.1,00,000/- had been taken by the petitioner-defendant on account of the marriage of his daughter. An agreement was executed which was not read by the petitioner-defendant and that the same had been misused by the respondent-plaintiff. During the course of the trial, one person namely Harnek Singh, Numbardar, who was stated to be a witness to the agreement to sell was sought to be examined as PW2. His examination-in-chief by way of an affidavit was recorded and the said affidavit (Annexure P-4) was tendered in evidence. However, on the day when he was to be cross-examined, the respondent-plaintiff made a request to the trial Court that he did not wish to examine PW2 Harnek Singh as a witness and that he wanted to give him up as he had been won over by the petitioner-defendant. The request was allowed leading to the filing of the present revision petition.

4. It would be relevant to mention here that no one appeared on behalf of the respondent despite service.

5. I have heard learned counsel for the petitioner and have gone through the paper book.

6. Learned counsel for the petitioner submitted that the trial Court erred in permitting the respondent-plaintiff to give up PW2 Harnek Singh after his examination-in-chief had been recorded. It was submitted that the permission to give up PW2 Harnek Singh had greatly prejudiced the rights of the petitioner-defendant as he intended to cross-examine the said witness on material points. In support of his contentions, learned counsel relied upon the judgment of Hon'ble Supreme Court of India in **Ameer Trading Corporation Ltd. Versus Shapoorji**

Data Processing Ltd. 2004 (1) R.C.R. (Civil) 259 as well as the judgments of Coordinate Benches of this Court in *M/s S.K.Bimal Kumar and another versus M/s Nanak Singh and others 2012 (44) R.C.R. (Civil) 104 and Ranbir versus Satish Chander and another 2018 (1) R.C.R. (Civil) 791.*

7. I have considered the submissions made by learned counsel for the petitioner.

8. Admittedly, the respondent-plaintiff is the dominus litis of this case. No doubt, it appears from the paper book that the affidavit of PW2 Harnek Singh was tendered in evidence on 04.08.2021 as the affidavit is on record as Annexure P-4. However, on 06.09.2021, the respondent-plaintiff gave up PW2 Harnek Singh. In the considered opinion of this Court, being the dominus litis, the plaintiff-respondent had every right to decide as to which witness he wanted to examine and which witness he wished to give up. Merely because the affidavit had been tendered in evidence would not mean that the witness had to be cross-examined. Many times it happens that the witnesses appear in the witness box for examination-in-chief but do not subsequently appear in the witness box for cross-examination. Under the circumstances, even the examination-in-chief is not taken into consideration. Same will be the case here too. Once PW2 Harnek Singh was permitted to be given up, even his examination-in-chief could not be considered and it would be for the respondent-plaintiff to prove his own case by leading evidence. No valuable right of the defendant can, therefore, be said to have been prejudiced. It would have been a different case had the petitioner-defendant sought to summon Harnek Singh as a witness in his evidence. However, that stage has not reached and the petitioner-defendant will have to wait for the same. It would be open to him to examine Harnek Singh as his own witness, if so advised and if so permitted by law. However, as observed earlier, the petitioner-defendant cannot insist upon the respondent-plaintiff examining Harnek Singh as a witness.

A similar issue arose before the Andhra Pradesh High Court in *Lingamdinne Rama Reddy Versus Vongole Venkatarami Reddy 2009(39) R.C.R.(Civil) 925.*

There also, the Andhra Pradesh High Court took the view that the plaintiff has the liberty to give up a witness and the defendant cannot compel the Court to summon an individual as a witness cited by the plaintiff. In that case also, the affidavit had been tendered in the examination-in-chief after which the witness was given up. The request made by the defendant to cross-examine the witness was rejected in that case and it was held as under:-

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“6. The respondent filed a memo before the Court, with a prayer to eschew the affidavit, filed in lieu of chief-examination of PW.2 i.e. Pulla Reddy. The trial Court appears to have acceded to the request. The petitioner wanted to cross-examine that very witness.

7. Be it under the relevant provisions of C.P.C., or the Evidence Act, it is always for a party to examine the witness of his choice, in support of his case. Even where the name of an individual figures in the list of witnesses, the party has a liberty to give up any person so included in the list. It is not uncommon that an individual, who offers to support a plea, may turn out to be otherwise, for variety of reasons; and the party, who intended to cite him as a witness, may in fact, change his mind.

8. In case the respondent did not examine a person, who attested Ex.A.1, it is for him to face consequences, that flow out of it. The petitioner cannot compel the Court to summon an individual as a witness cited by the respondent. Things would have been different altogether, had the petitioner intended to examine the said Pulla Reddy, as his witness. For that purpose, he has to wait till his turn comes. The evidence of the respondent herein is yet to be closed.

9. An attempt is made by the learned counsel for the petitioner that the effort of his client was to secure the presence of Pulla Reddy, as Court witness. As the very expression connotes, the 'Court witness' is the one whom the Court intends to examine on its own accord. No party can insist on the Court to summon any individual as a Court

witness.”

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9. I am in agreement with the view taken as also the reasons given by the Andhra Pradesh High Court in Lingamdinne Rama Reddy’s case (supra).

10. I have gone through the judgments relied upon by learned counsel for the petitioner. In M/s S.K.Bimal Kumar and another versus M/s Nanak Singh and others 2012 (44) R.C.R. (Civil) 104 (supra), the question was whether co-defendants can be given the right to cross-examine the witness produced by the other defendant. It was held that the cross-examination is a valuable right and, therefore, the same was granted. The petitioner, in the considered opinion of this Court, would not get any support or help from this judgment as it was a totally different issue not connected to the issue in hand. Same is the case with the judgment in Ameer Trading Corporation Ltd. Versus Shapoorji Data Processing Ltd. 2004 (1) R.C.R. (Civil) 259 (supra) wherein also the facts were totally different.

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

(VIKRAM AGGARWAL)
JUDGE

01.08.2023
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No