

In the High Court of Punjab and Haryana at Chandigarh

Crl. Revision (F) No. 67 of 2016
Date of Decision: 31.8.2018

Kulwinder Kaur and others

.....Petitioners

Versus

Bhadur Singh

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Ishan Cooner, Advocate
for the petitioners.

ANITA CHAUDHRY, J

This revision is directed against the judgment dated 21.11.2015 passed by the District Judge, Family Court, Ambala in the petition filed under Section 125 Cr.P.C. vide which maintenance of Rs.1,000/- each had been allowed to each of the petitioners.

Record was called for and has been perused.

Kulwinder Kaur by way of her evidence tendered her affidavit Ex. PW1/A in evidence and made a statement closing her evidence. The Court did not give the respondent the right of cross-examination. On the other hand, respondent himself appeared in the witness box as RW-1 and tendered his affidavit Ex.RW1/A and he closed his evidence. Though, there is reference in the zimni order dated 20.11.2015 that counsel do want to cross-examine either the petitioner or the respondent but there is no such statement on file either of parties or their counsel.

It would be useful to reproduce Section 10, 15, 16 and 20 of the Family Courts Act, 1984 ('Act' for short) which read as under:-

10. Procedure generally.-

(1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and

of any other law for the time being in force shall apply to the suits and proceedings [other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)] before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil court and shall have all the powers of such court. -(1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings [other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)] before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil court and shall have all the powers of such court."

(2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) or the rules made thereunder, shall apply to the proceedings under Chapter IX of that Code before a Family Court.

(3) Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other.

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15. Record of oral evidence. - In suits or proceedings before a Family Court, it shall not be necessary to record the evidence of witnesses at length, but the Judge, as the examination of each witness proceeds, shall, record or cause to be recorded, a memorandum of the substance of what the witness deposes, and such memorandum shall be signed by the witness and the Judge and shall form part of the record.

16. Evidence of formal character on affidavit. - (1) The evidence of any person where such evidence is of a formal character, may

be given by affidavit and may, subject to all just exceptions, be read in evidence in any suit or proceeding before a Family Court. (2) The Family Court may, if it thinks fit, and shall, on the application of any of the parties to the suit or proceeding summon and examine any such person as to the facts contained in his affidavit.

x x x x x

20. Act to have overriding effect. - The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Section 15 deals with record of oral evidence and provides that in suits or proceedings before a Family Court, it shall not be necessary to record the evidence of witnesses at length, but the Judge, can record or cause to be recorded, a memorandum of substance of what the witness deposes, and such memorandum has to be signed by the witness and the Judge and shall form part of the record.

Further, Section 16 provides that evidence of formal character can be given by affidavit and can be read in evidence in any suit or proceeding. Sub-section (2) of Section 16 provides for summoning and examination of person giving the affidavit, on an application.

An over all analysis of the above provisions reveals that while provisions of CPC have been made applicable for the purpose of procedure before the Family Court, Section 15 of the Act enables a Family Court to record the evidence of witness by way of memorandum of the substance of what the witness deposes and provides that 'it shall not be necessary' to record the evidence of witnesses at length. The use of expression 'it shall not be necessary' to record the evidence of witnesses at length cannot be read as a

in case instead of recording the deposition of witnesses by way of memorandum of the substance, evidence of witness at length has been recorded, the said procedure would stand vitiated.

On perusal of the record, I find that no opportunity of cross-examination has been offered to either of the parties and the trial Court had only accepted the affidavits furnished by each side.

The duty of the Court is to search for the truth and then do justice and this is the very object for which the Courts are created. The Courts have to remove chaff from the grain, to separate falsehood from truth. Matrimonial litigation begins with parties mounting claims on each other which often are exaggerated to such an extent that truth and falsehood become inextricably mixed up and it is difficult to separate them and it would become more difficult if the right of cross-examination to the witness is closed. Therefore in matrimonial litigation the family Courts have to take due care and caution in closing the valuable right to file the written statement or to lead evidence or the right of cross-examination of any witness.

The Family Court had acted in contravention of provisions of Section 15 of the Act.

The petition is allowed. Order dated 21.11.2015 passed by the Family Court is *set aside*. The parties would appear before the Family Court, Ambala on 24.9.2018. Since respondent is not appearing here, notice shall be sent to him. The Court would give opportunity of cross-examination to both the sides and then decide the case afresh expeditiously.

**(ANITA CHAUDHRY)
JUDGE**

August 31, 2018

ps-I

**Whether speaking/reasoned : Yes
Whether reportable : Yes**