



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

120

CR-7656-2025

Date of Decision.:30.10.2025

Shital Kaur @ Sheetal Kaur (deceased) through LR

.....Petitioner

Vs.

Harjit Kaur and Others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Arihant Jain, Advocate
for the petitioner.

DEEPAK GUPTA, J. (ORAL)

The petitioner—who is the respondent-plaintiff in Civil Appeal bearing CNR No. PBSG01-002301-2018, titled *Harjit Kaur v. Daljit Kaur & Others*, pending before the learned Additional District Judge, Sangrur—assails the order dated 26.09.2025, whereby the Appellate Court allowed the appellant-defendant Harjit Kaur's application under Order XLI Rule 27 CPC to examine Raghbir Singh, one of the attesting witnesses to the Will in question.

2. The dispute centers around a registered Will dated 07.07.2005 (*Ex.P1*) purportedly executed by Narinder Singh. It is scribed by DW-5 Bhagwant Singh. The Will was attested by Raghbir Singh and Jagroop Singh. Jagroop Singh has since died, as was deposed by his son Bhupinder Singh (DW-12). The Trial Court, by judgment dated 22.02.2018, held that the defendant (*present contesting respondent*) failed to prove the Will, inter alia, for non-examination of the surviving attesting witness, Raghbir Singh.

3. In appeal, the defendant moved an application under Order XLI Rule 27 CPC to examine Raghbir Singh in additional evidence. The Appellate



CR-7656-2025

-2-

Court allowed the application by the impugned order, recording that repeated efforts had been made to summon the said attesting witness during trial, and there is a necessity of such testimony to comply with Section 68 before resorting to Section 71 of the Indian Evidence Act.

4. Assailing the order, Learned counsel for the petitioner contends that the defendant had ample opportunities before the Trial Court to adduce the best evidence and, having failed to do so, cannot be permitted to fill gaps at the appellate stage. It is urged that the liberal approach adopted by the Appellate Court ignores the discipline of due diligence embedded in Order XLI Rule 27(1)(aa) CPC.

5. The governing principles for allowing additional evidence in appeal are well-settled. Under Rule 27(1)(aa), additional evidence may be permitted if, notwithstanding due diligence, such evidence could not be produced at trial. However, under Rule 27(1)(b), additional evidence can also be permitted if the Appellate Court requires it to enable it to pronounce judgment, or for any other substantial cause. The true test is whether the Appellate Court can pronounce judgment without such evidence; if not, admission may be warranted. Applications under Rule 27 are ordinarily to be dealt with at final hearing, after considering whether the appellate record is insufficient to pronounce judgment. The focus is necessity, not mere relevance.

6. The Appellate Court in this case has relied on a coordinate precedent of this Court, ***Gurdev Singh & another v. Harbans Singh***, CR-1745-2022, decided on 20.12.2022, for the proposition that where additional evidence dispels material doubt on the main issue and is imperative in the interest of justice, leave may be granted.

7. Further, for proving a Will, Section 68 of Evidence Act mandates examination of at least one attesting witness (if alive and subject to the Court's process). Section 71 is an enabling exception, applicable where

**CR-7656-2025****-3-**

an attesting witness denies or does not recollect the execution; it is not a substitute to bypass Section 68 when an attesting witness is available.

8. In the present case, one attesting witness (Jagroop Singh) is dead; the other (Raghubir Singh) is alive. The scribe (DW-5) has been examined. The Trial Court's principal reason to discard the Will was non-examination of the surviving attesting witness. On these facts, the Appellate Court correctly observed that prior to considering recourse to Section 71, the party must first exhaust Section 68 by producing the surviving attesting witness.

9. The record, as noticed by the Appellate Court, reflects repeated trial-stage efforts to secure Raghubir Singh's presence, i.e., repeated summons followed byailable warrants. The inability to secure his attendance, despite coercive process, demonstrates due diligence under Rule 27(1)(aa).

10. Independently, the proposed testimony is central to the material issue of due execution of the Will and the Appellate Court has expressly recorded that it is unable to pronounce judgment without considering it. This squarely attracts Rule 27(1)(b).

11. The petitioner's apprehension of "filling lacunae" cannot prevail in the abovesaid facts and circumstances.

12. Further, exercise of superintendence under Article 227 is confined to jurisdictional error, perversity, or patent illegality. The impugned order demonstrates correct application of Order XLI Rule 27 CPC and the Evidence Act. As such, no perversity or jurisdictional error is made out warranting interference, except on the question of terms.

13. Consequently, the revision petition is disposed of with limited modification to the order dated 26.09.2025 as under:



CR-7656-2025

-4-

(i) Permission to examine Raghbir Singh, attesting witness to the Will dated 07.07.2005, as additional evidence is affirmed, but subject to costs of ₹25,000/- to be paid by the appellant-defendant Harjit Kaur to the present petitioner (respondent-plaintiff in appeal) by Demand Draft within 3 weeks from receipt of the order by the concerned court and by conveying the same to Harjit Kaur through her counsel, and before the examination of the witness.

(ii) The Appellate Court shall record the additional evidence expeditiously, preferably within six weeks of deposit of costs, affording full cross-examination and consequential rebuttal, if any, strictly confined to the scope of the permission.

(iii) In default of cost payment within the above timeline, the permission to lead additional evidence shall stand recalled, and the appeal shall proceed on the existing record.

(iv) The Appellate Court shall thereafter hear and decide the appeal on merits in accordance with law, uninfluenced by any observations herein on the merits of the Will or the parties' titles.

14. Since this order is passed without issuing notice to the non-applicants to obviate delay in the appellate proceedings, it is clarified that the affected respondents in the revision shall be at liberty to seek appropriate variation/modification, if they feel aggrieved. No order as to further costs.

(DEEPAK GUPTA)
JUDGE

October 30, 2025

Neetika Tuteja

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No