

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

Civil Revision No.3357 of 2015 (O&M)

Date of decision: 18.05.2015

& Civil Revision No.3414 of 2015 (O&M)

Prahlad and another Petitioners

versus

Surinder Hara Foundation and others Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Shailendra Jain, Senior Advocate,
with Mr. Bhagender, Advocate,
for the petitioners.

1. Whether reporters of local papers may be allowed to see the judgment ? **Yes.**
2. To be referred to the reporters or not ? **Yes.**
3. Whether the judgment should be reported in the digest ? **Yes.**

K.Kannan, J. (Oral)

I. Civil Revision No.3357 of 2015

1. The plaintiffs, who have filed a suit for declaration to the estate of one S. Ikram Singh, are confronted with an application filed by the defendant in suit seeking for admissions of the plaintiffs on certain issues relating to the alleged execution of a Will by S.Ikram Singh and alleged creation of trust by him. The questions which were sought to be raised by the defendant related to certain alleged facts which the defendant wanted the plaintiffs to admit.

The plaintiffs are aggrieved that such an application could ever be

moved, for, according to the plaintiffs, the provision under Order 12 Rule 4 CPC to admit facts cannot be made before the statement is filed. The provision itself is to enable a court to pass suitable orders or judgments and the expression “hearing” as contemplated under Order 12 must only be a stage of proceeding after a written statement is filed. The court has allowed the application and has directed the plaintiffs to give response to the questions raised by the defendant.

2. Learned senior counsel for the plaintiffs read to me the questions raised through the application filed under Order 12 Rule 4/5 CPC which as I have observed already relate to an alleged Will of S. Ikram Singh said to have been executed on 18.01.2011, the trust which he had created in respect of his properties and the nature of relationship that he had with the defendant. The provision of Order 12 Rule 4 CPC would show that it would be open for the party to cause the other party to either admit for the purposes of suit only, any specific facts or facts mentioned in the notice and if there is a refusal to admit, the court would be at liberty to allow for the costs for proving such facts whatever may be the result, unless the court otherwise directed.

3. I am unable to accept the contentions made by the learned senior counsel that the Order 12 Rule 4 CPC cannot be invoked before filing the written statement. It would be probably

appropriate that if the written statement is also filed and when issues are framed, any party may apply to a court under Order 12 Rule 4 CPC to cause admissions to be made and obviate the scope of proving matters which are admitted and thereby saving time and expenses for both the court and the parties for proving matters which are admitted. If the questions are raised seeking for admissions and admissions are made by a party in form-11 of Appendix C to the Civil Procedure Code, then the procedure that would be followed by the court is what is mentioned under Rule 6 allowing for a judgment to be passed in terms of such admissions. The rule is permissive and it does not preclude a party not to avail to himself of such opportunity and proceed to trial in the ordinary way. The Rule actually does not even contemplate an interim order. If there is an admission, the court will pass judgment on admission under Rule 6. If there is no admission, there is nothing else that is required to be done. The plaintiffs may choose, therefore, either to admit the facts or they may simply choose to deny the questions raised and decline to make any admissions and let it be known to the defendant that the questions raised are not admitted by the plaintiffs and that the defendant would be required to prove the same. The issue of whether the costs would be ordered for proving such admission would be matter for discretion for a court, for, that is how the language of Rule 4 is.

4. The plaintiffs have caused a knee-jerk reaction to a procedure which the defendant has adopted which perhaps is not the usual way when admissions are sought but I find nothing inherently defective or wrong for adopting such a procedure. The plaintiffs themselves cannot be in any way prejudiced, for, as I have observed there was no scope for passing even an interim order. If the Judge has passed an order directing the plaintiff to make an admission, I will only clarify that such an order is not a mandate but it is purely directory. It shall be open for the plaintiffs to make admissions if they choose to do so or decline admissions, and force a trial on all aspects pleaded. With this liberty, the Civil Revision No.3357 of 2015 is disposed of.

II. Civil Revision No.3414 of 2015

5. In the light of the observations made above allowing the plaintiffs to adopt such a procedure of either making admission or declining to do the same, I will also modify the directions given by the trial Judge declining to strike off the defence and calling upon the plaintiffs to make their response before the defendant could be called upon to file a statement. The said order is also consequently modified and I grant the liberty to the plaintiffs to state their own position within 1 week from the date of receipt of copy of this order in the manner that they want to deal with the application filed by the defendant under Order 12 Rule 4 CPC whether the plaintiffs admit

any of the averments. The statement will also require to be filed within a week from the said date when the plaintiffs choose to admit or decline to make any admission. The time provided shall be taken as a time extended by the court under Order 8 Rule 1 CPC. I have adopted such a procedure dispensing with notice to the respondents only in order that the trial does not get stalled by a civil revision filed at such a preliminary stage of the suit proceedings. The Civil Revision No.3414 of 2015 is disposed of on the above terms.

(K.KANNAN)
JUDGE

18.05.2015
sanjeev