

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

**CR No.5307 of 2015 (O&M).**

**Date of Decision: 02.09.2015.**

Sahbo Devi

....Petitioner.

VERSUS

Divisional Forest Officer and others

....Respondents.

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**CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.**

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**Present:** Mr. K.P. Singh, Advocate for the petitioner.

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**SNEH PRASHAR, J.**

By way of this petition under Article 227 of Constitution of India, petitioner Smt. Sahbo Devi has sought quashing of interlocutory order dated 31.07.2015 passed by Civil Judge (Junior Division), Jhajjar whereby her application filed under Order 1 Rule 10(2) of the Code of Civil Procedure (for short, "the Code") for being impleaded as party to Civil Suit No.88 dated 12.05.2010 filed by Smt. Rekha Malik and another (respondents No.4 and 5) was dismissed.

As is apparent from the facts pleaded and documents annexed with the petition, Smt. Rekha and her daughter (respondents No.4 and 5)

filed a suit for declaration with consequential relief of mandatory injunction claiming to be legally entitled to get service benefits of deceased Sanjeev Kumar. In the suit, Divisional Forest Officer, Jhanara Bagh, Jhajjar and others (respondents No.1 to 3) were impleaded as defendants. After trial, the suit was dismissed finding that the suit was not maintainable and that the mother of the deceased Smt. Sahbo Devi (petitioner) being class-I legal heir had not been impleaded as party to the suit.

Feeling aggrieved by the judgment and decree dated 01.09.2012 passed by learned Civil Judge (Junior Division), respondents No.4 and 5 preferred an appeal. During the appeal proceedings, the appellants filed an application under Order I Rule 10 read with Order VI Rule 17 of the Code for impleading the mother and the alleged second wife and son of deceased Sanjeev Kumar. Respondents No.1 to 3 gave a note of no objection on the application and the learned District Judge vide order dated 24.01.2014 allowed the application and impleaded all the three persons as party to the appeal proceedings, subject to all just grounds available to the parties. Amended grounds of appeal was taken on record and notice to the newly added respondents including the petitioner who was impleaded as respondent No.4 was issued.

On 21.02.2014, the petitioner-mother of deceased Sanjeev Kumar, filed an application under Section 114 of the Code, objecting to her having been impleaded as party to the appeal proceedings and sought deletion of her name from the array of respondents. Since counsel for the appellant gave a note of no objection on the application, learned District

Judge vide order even dated i.e. 21.02.2014 ordered for deletion of name of respondent No.4 (petitioner). Subsequently, the appeal was decided by learned Additional District Judge, Jhajjar, vide judgment dated 28.04.2015 and the case was remanded back to learned trial Court for taking evidence on the issue whether appellants and respondents No.5 and 6 are entitled to service benefits of Sanjeev Kumar (now deceased) as per Government policy.

After learned Civil Judge (Junior Division) was again seized of the matter, Smt. Sahbo Devi filed an application under Order I Rule 10(2) of the Code for being impleaded as party to the suit being class-I legal heir of the deceased. However, her application was dismissed by learned trial Court vide the impugned order dated 31.07.2015.

Aggrieved by the impugned order, the petitioner has preferred the instant revision petition.

The submissions made by Mr. K.P. Singh, learned counsel representing the petitioner have been considered.

Learned counsel for the petitioner argued that the application filed by respondents No.4 and 5 during the appeal proceedings for impleading the petitioner as party to the case, by invoking the provisions of Order I Rule 10 read with Order VI Rule 17 of the Code, was not maintainable. He also submitted that no amendment could be sought at such late stage and that the petitioner being mother and class-I legal heir of the deceased was a necessary party to the suit as she too is entitled to the service benefits of her deceased son. To support his argument, learned

counsel relied upon *Sukhdev Singh vs. Bal Krishan, 2005(1) R.C.R. (Civil) 459* and *Nirmal Singh & Ors. vs. Tarsem Singh & Ors., 2014(4) Civil Court Cases 670.*

Petitioner Smt. Sahbo Devi is the mother/class-I legal heir of deceased Sanjeev Kumar. As discussed above, the suit filed by respondents No.4 and 5 claiming to be entitled to service benefits of deceased Sanjeev Kumar was dismissed on the ground that the petitioner had not been impleaded as party to the suit. However, admittedly during appeal proceedings, appellants-respondents No.4 and 5 filed an application for impleading the petitioner as well as two other persons, who also claimed to be wife and son of deceased Sanjeev Kumar, as party to the appeal. The application was allowed by appellate Court and the petitioner was impleaded as respondent No.4 in the appeal. On notice, the petitioner appeared and in her own wisdom filed an application under Section 114 of the Code strongly objecting for having been impleaded as party to the appeal. She sought review of the order dated 24.01.2014 and prayed that her name be deleted from the array of respondents. So much so she claimed compensation of Rs.50,000/- from the appellants in that regard.

When the petitioner herself had got her name deleted from the array of parties to the case and an order on her application to that effect had been passed by the Appellate Court/District Judge, her subsequent application before learned trial Court for impleading her as party to the suit was not maintainable. The trial Court could not have passed any order reviewing/recalling the order of the District Judge. Moreso, the suit had

been remanded to the trial Court by learned District Judge for the limited purpose of taking evidence on the issue whether the appellants (respondents No.4 and 5) and the newly added respondents No.5 and 6 are entitled to service benefits of deceased Sanjeev Kumar as per Government policy.

In the above set of facts, when the petitioner appears to have become wiser, the only remedy available to her is to either assail the order dated 24.01.2014 of the District Judge as per law or to file an appropriate application before the same appellate court for recalling of the said order.

Learned counsel for the petitioner fails to demonstrate any illegality or perversity in the order of learned trial Court which calls for intervention and the petition is dismissed.

**(SNEH PRASHAR)**  
**JUDGE**

**02.09.2015.**

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