

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.5424 of 2013

Date of Decision.07.04.2015

Harphool Singh

.....Petitioner

Versus

Mahindero and others

.....Respondents

Present: Mr. I.S. Pabla, Advocate
for the petitioner.

Mr. M.S. Joshi, Advocate
for respondent Nos.1 to 3.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J. (ORAL)

1. The order impugned is rejection of an application filed under Order 23 Rule 3 CPC that was for recording a compromise and to pass decree in terms thereof. In a suit for declaration and injunction, a compromise is said to have been brought about between plaintiff and the defendant and the Court was also reported to have taken a statement from the defendant on 27.03.2009 that the compromise could be brought on record and that he will have no objection if decree was passed in terms of such compromise. The Court ought to have proceeded to pass the order there and then on 27.03.2009 but had merely allowed the case to linger on. In the meanwhile, it appears that the defendant expired and the legal representatives were brought on record. On 11.02.2012, the legal representatives were permitted to file

written statement and the plaintiff filed a replication for that. Issues had been framed and when it was posted for trial, the plaintiff has taken time about five or six times and moved the present application to record the compromise already filed in Court and relied for its truth, the statement of the deceased defendant received by Court.

2. The lower Court has observed that the only remedy for the plaintiff was to prefer revision against the order directing impleadment of the legal representatives of the defendant and permitting the defendants to file a written statement. Having not filed any revision against the order, the plaintiffs were barred for filing an application recording the compromise.

3. The procedure adopted by the trial Court is erroneous and is illegal. When there was a compromise, he had no power to call upon parties to give evidence on the pleadings for suit. The language under Order 23 Rule 3 CPC is pre-emptory in character that the Court has not even a power to adjourn the case. It is bound to decide on the validity of compromise on day to day basis. The procedure adopted by the trial Judge is erroneous. It is Court's own lapse in failing to do what it was bound to do that has caused this problem. If the defendant is examined in Court who speaks about a compromise and says that he has no objection, it had no business to adjourn the case. The Court was bound to have granted a decree on the same day in terms of the decree. If for some reasons, the case was getting adjourned from time to time and the parties had been indiscreet in not getting the Court for adopting the appropriate procedure, it should correct itself even an occasion presented itself. A Presiding Officer is bound to know that when a

petition for recording compromise is filed, it cannot force a party to give evidence on the pleadings between the parties for the only reason that it has proceeded to frame issues also. The whole exercise undertaken by the Court is out of sync with law and betrays a complete error in procedure.

4. The impugned order is set aside. The Presiding Officer is directed to examine the genuineness of the compromise put in Court and allow for evidence of the petitioner only with reference to the compromise in Court and not with reference to any of the issues which are framed on the basis of written statement. The statement is ordered to be eschewed out of file and the Court will decide on the application for recording the compromise. If only application is dismissed, the Court will take the written statement and proceed with the case.

5. The revision petition is allowed and the matter is remitted to the lower Court for disposal of the matter in accordance with law as per direction given above.

(K. KANNAN)
JUDGE

April 07, 2015
Pankaj*