

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

CR No. 6392 of 2012 (O&M)

Date of Decision: 4.5.2015

Chandu

....Petitioner

versus

Smt. Ram Kali and others

....Respondents

CORAM: - HON'BLE MR. JUSTICE K.KANNAN

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

Mr. Manmohan, Advocate for

Mr. Suman Jain, Advocate for respondents.

K.KANNAN, J.

Written statement filed by defendant No. 5 admitting to the plaintiffs's claim was sought to be resiled by an application for amendment of the written statement. It is contended that the written statement filed already was manipulated by the daughter and he was not willing party to such written statement. According to him only the thumb impression was that of the defendant and he did not know the recitals that contained above verification. He also denied that he ever engaged the counsel who had represented him by filing a vakalatnama in his behalf. His plea is that the plaintiff's counsel and the counsel who represented him were senior and junior respectively and the statement already filed was fraudulent.

The assertion of a party denying the averments contained in the written statement which is the record of the Court can not be merely by oral assertions. The Court cannot consider the issue whether such an application could be allowed without allowing for parties to let in evidence in that

regard. The counsel would argue that the Court had not called upon the party to give evidence. It is rather a strange argument to make that the Court did not call upon the party to offer such evidence. It is the duty of the party to volunteer to give evidence and the Court is not required to prompt a party to such a course.

I will not allow technicalities to come in the way and I set aside the order and remit the order before the Court below. Petitioner is at liberty to offer such evidence. Needless to state that the plaintiff will also be at liberty to give appropriate evidence which the plaintiff deems fit. The matter is remitted back to the Court below for considering all evidence regarding the assertions made in the application and the Court will pass a suitable order on the application for amendment depending on the outcome of the decision regarding the contentions raised by the petitioner in the application filed in support of the plea for amendment.

The impugned order is set aside the civil revision is allowed in the above terms.

(K.KANNAN)
JUDGE

4.5.2015
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