

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

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**Civil Revision No.6593 of 2015(O & M)
Date of Decision:16.10.2015**

Sawinder Kaur

....petitioner

Versus

Dilbagh Singh

.....respondent

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

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

Present: Ms.Manjeet Kaur, Advocate for
Mr.Karanjit Singh, Advocate
for the petitioner

ARUN PALLI, J.(ORAL):-

Vide order being assailed dated 24.01.2013, rendered by the Civil Judge (Jr.Divn.), Tarn Taran, plaintiff Dilbagh Singh was held to be suffering from mental infirmity and was, thus, not capable of protecting his own interest in the suit. As a result, he was allowed to prosecute the suit through his next friend i.e. Daljit Kaur, who happened to be his wife. Subsequently, an application was moved by the petitioner-defendant for recalling of the said order, since she was not associated with the inquiry to determine the mental infirmity of the plaintiff. As even the said application was dismissed by Civil Judge (Jr.Divn.), Tarn Taran, vide order dated 31.07.2015, defendant is before this Court, vide this revision petition.

The conclusion arrived at in this regard reads as thus:

“After hearing learned counsel for both the parties and perusal of the record, it shows that the present case is filed by the plaintiff through his next friend Smt.Daljit Kaur who is wife of present plaintiff Dilbagh Singh. During the pendency of the case, the enquiry was held to determine if plaintiff Dilbagh Singh is of unsound mind in pursuance of the order of learned Predecessor Presiding Officer of this Court. The medical board was constituted which submitted its report after ensuring the identity of the plaintiff. The said order dated 08.09.2012 was passed in the presence of defendant. It was reported on 27.09.2012 that defendant did not visit hospital to identify Dilbagh Singh. Thereafter she did not appear on 28.09.2012 and was proceeded against ex parte.

Thereafter after holding detailed enquiry it is declared that plaintiff Dilbagh Singh is of unsound mind and he was allowed to pursue the present case through his next friend Smt.Daljit Kaur who is wife of present plaintiff Dilbagh Singh. Defendant was earlier proceeded against ex parte on 19.11.2008 but thereafter he put in appearance on 27.01.2009. Order of ex parte against him was set aside. Present case was dismissed in default on 05.02.2013 due to non appearance of any of the parties. Thereafter same was restored on 07.01.2015. At that time, issues were framed and the entire evidence was led by the

plaintiff. Now the case is at the stage of evidence of defendant. Defendant has shown his grievance after a period of about more than two years. The report produced by Dr.Ran Ranbir Singh at the time of enquiry Ex.PY shows that the plaintiff was medically examined after he was identified by the defendant. Evidence of said witness is formal in nature.”

Ex facie, pursuant to the directions issued by this Court, vide order dated 03.01.2011, trial Court, vide order dated 08.09.2012, constituted a medical board to determine; whether plaintiff Dilbagh Singh was indeed a person of unsound mind or suffered from any mental infirmity. The said order i.e. dated 08.09.2012 was passed in presence of the petitioner-defendant. And vide letter dated 27.09.2012, it was reported that the defendant did not visit the hospital to identify Dilbagh Singh. So much so, she did not even appear in Court on 28.09.2012 and was, thus, proceeded against ex parte. And after a period of over 2 years, she moved an application for setting aside the order dated 24.01.2013, pleading that the inquiry under Order 32 Rule 15 CPC was conducted in her absence. Apparently, the application moved by the petitioner lacked bona fides as also the merits.

Learned counsel for the petitioner could not point out as to how the conclusion arrived at by the Court was either contrary to the position on record or suffered from any material illegality.

That being so, no interference is warranted in exercise of revisional jurisdiction under Article 227 of the Constitution of India is

warranted. The petition being devoid of merit is accordingly dismissed.

16.10.2015

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(ARUN PALLI)
JUDGE