

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

**FAO No.1799 of 2015 (O&M)
Date of Decision: April 27, 2015**

Bikram Singh

.. Petitioner

vs.

Col. Raghbir Singh Shergill and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. M.S. Khaira, Senior Advocate with
Mr. R.S. Khaira, Advocate for the appellant.

Mr. Manmohan Singh, Senior Advocate with
Mr. M.P. Gupta and Raman Sharma, Advocates
for the respondents.

- 1. Whether Reporters of Local Newspapers 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?*

Kuldip Singh J.

Certified copy of the order dated 18.02.2014 passed by learned District Judge, Rupnagar, filed by the appellant in the Court today, is taken on record.

Impugned in the present appeal is the order dated 18.02.2014 passed by the learned District Judge, Rupnagar, vide which in the pending application under Section 276 of the Indian Succession Act, 1925 for grant of probate, the examination of Baljit

Singh son of Kulwant Singh (deceased)-respondent No.7 was disallowed on the ground that defence of his predecessor-in-interest Kulwant Singh-respondent No.7 was struck off. No civil revision was filed by Kulwant Singh-respondent No.7 or his legal heirs against the order dated 09.03.2011, vide which the correction was made in the original order dated 20.04.2010 to struck off the defence of respondent No.7 also. It was stated that Baljit Singh, being the legal heir of Kulwant Singh (deceased) has stepped into shoes and is bound by the earlier order of the court of striking off his defence.

I have heard learned counsel for the parties and have also carefully gone through the case file.

A perusal of the file shows that earlier the appellant had filed Civil Revision No.1637 of 2014 before this Court and the said revision was dismissed as withdrawn on 13.02.2015 with liberty to file an appeal against the impugned order. It was further ordered that in case, the appeal is filed within ten days, bar of limitation in filing the appeal will not come in way.

In pursuant to the said order, the present appeal has been filed, in which certified copy of the impugned order was not placed on file and it was stated that no exemption was sought for filing of certified copy of the order. However, a formal application was filed for condonation of delay of 278 days in filing the appeal. An application has also been filed under Order 22 Rule 4 CPC for impleading respondent nos.9 to 11 as legal heirs of deceased Kulwant Singh-respondent No.7.

Learned counsel for the appellant has argued that the application for condonation of delay is formal. As per direction of the Court, he has filed the certified copy of the impugned order in the Court today.

In any way passing of the impugned order is not disputed. The copy of the said order was filed with the connected Civil Revision No.3919 of 2014, which has been allowed by this Court by an order of even date.

After hearing learned counsel for the parties and going through the case file, I am of the view that touching aspect of this case is that a probate case is pending, in which Will is in dispute. The matter is hanging fire before the District Courts and the parties are rigorously contesting the same for the last about six years. Even before this Court, much time has been consumed in raising technical objections.

The crux of the dispute is that the defence of respondent Nos.6 and 8 was struck off vide order dated 20.04.2010 and the same was set aside by this Court vide order dated 06.01.2012 passed in Civil Revision No.5869 of 2010. However, learned District Judge vide order dated 09.03.2011, amended the original order dated 20.04.2010 and ordered that wherever the words “respondent Nos.6 and 8” are appearing, the same may be read as respondent Nos.6 to 8. The said order has also been set aside by this Court today in Civil Revision No.3919 of 2014.

On 18.02.2014, Baljit Singh, who is legal heir of Kulwant Singh-respondent No.7 was present in the Court of learned District Judge, Rupnagar and learned counsel for respondent Nos.6 and 8 wanted to examine him as a witness. The same was objected by learned counsel for the appellant that defence of predecessor of Baljit Singh was struck off and the said order has not been set aside so far.

It has also been argued that respondent No.6 admitted the will in question and reference has also been made to the provisions of Order 16, Rule 1, 1-A and 2-B CPC.

I am of the view that it is a civil dispute and the technicalities should not stand in the way of justice. The examination of Baljit Singh cannot be shut on the ground that co-respondents want to examine him as witness to support their case despite the fact that they had admitted the will. Even if the defence of a person has been struck off, he can appear as witness to support the co-respondent. Therefore, the order is misconceived and liable to be set aside, on this ground in any case.

In the order of even date passed in Civil Revision No.3919 of 2014, the order of striking off the defence of respondent No.7 has also been set aside.

The following authorities of Hon'ble Apex Court relied upon by the learned counsel for the respondent, are not attracted to the facts of the present case:

1. Modula India v. Kamakshya Singh Deo, AIR 1989 (SC) 162.

2. Sadhana Lodh. v. National Insurance Co. Ltd. and another,
AIR 2003 (SC) 1561.
3. Koopilan Uneen's daughter Pathumma and others v.
Koopilan Uneen's Son Kuntalan Kutty dead by LRs and
others, AIR 1981 (SC) 1683.
4. Hira lal Patni v. Sri Kali Nath, AIR 1962 (SC)199.
5. Indermani Kirtipal v. Union of India and others, AIR 1996
(SC) 1567.
6. Subhas Mahadevasa Habib v. Nemasa Ambasa Dharmadas
(deceased by LRs.) & Ors., AIR 2007 (SC) 1828.

As a result of the foregoing discussion, the impugned order is set aside and Baljit Singh is ordered to be examined as a witness of the respondents. Since the case is already seven years old, the trial court is directed to expedite the disposal of the same.

The appeal is allowed accordingly and the accompanied applications also stand disposed of.

April 27, 2015
sarita

(KULDIP SINGH)
JUDGE