

\$~20

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM (M) 725/2015 and CM APPL. 14225/2015
AJAY KUMAR SINGH

..... Petitioner

Through Mr. Vikram Saini and Mr. Chhaya
Sharma, Advocates

versus

RICH PAL SINGH AND ORS.

..... Respondents

Through Mr. Naushad Ahmed Khan,
Additional Standing Counsel (Civil)
GNCTD with Mr. Neelam Kholiya,
Advocate
Insp. Rich Pal Singh, ASI Sahdev
Singh, Pairvi Officer SI RamtirthHC
Satish Kumar and HC Sompal.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **14.03.2016**

Petitioner is aggrieved by the order dated 18.04.2015 by which five applications were decided. Petitioner is aggrieved largely by the fact that the written statement had been filed by defendant No. 1 which was filed on 19.03.2010. This was after concession has been granted to the defendants to lead their defence. Learned counsel for the petitioner submits that the present suit is suit for recovery of damages filed by the plaintiff / petitioner against four police officials of whom first defendant is Inspector of Traffic Police, defendants No.2 and 3 are constables of traffic police and defendant No. 4 is

ACP of Traffic Police. The written statement was inadvertently (as is apparent from the record) signed only by defendant No.1; defendants No. 2 and 4 had not signed the written statement. This was brought to the notice of the Court by a subsequent application filed by the petitioner. This Court has now been informed that the written statement during the pendency of this petition has been filed by defendants No.2 to 4 as well. This written statement of defendants No. 2 to 4 is verbatim the written statement of defendant No.1.

Counsel for the petitioner is aggrieved; submission is that this written statement could not have been taken on record. He has placed reliance upon the judgment Sardar Vallabhbhai Patel Smarak Trust Vs. Samarth Nangia reported as 2011(177) DLT 499 to support his submission that such a permission could not have been granted.

Per-contra learned counsel for the respondent has been placed reliance upon the judgment International Security & Intelligence Agency Ltd. Vs. Municipal Corporation of Delhi & Ors. reported as 2002(2) CCC 672 to support his submission that procedural errors should not come in the way of substantive justice and merely because the written statement was inadvertently not signed by defendants no. 2 to 4 their defence could not be struck off.

This Court is not in agreement with the submission by the counsel for the petitioner. It is not as if the defence of defendants no.2 to 4 is separate and distinct from defendant no.1. They are all police officials from the same branch i.e. the Traffic Police. It is also not in dispute that they have a common defence. Counsel for the parties candidly admit before this Court that the written statement

now filed by defendants no.2 to 4 is in fact verbatim and ditto the written statement filed by defendant no.1. It is thus apparent that the mistake of the defendants No.2 to 4 who had inadvertently not signed the written statement cannot penalize them to the extent that decree should straight away fall into the lap of the plaintiff / petitioner without permitting them a right to plead their defence.

Impugned order calls for no interference.

Dismissed.

INDERMEET KAUR, J

MARCH 14, 2016

gb