

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

CR No.3297 of 2017

Date of decision: May 09, 2017

Bahadur Singh

....Petitioner

Versus

Baljit Kaur and others

....Respondents

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Sherry K. Singla, Advocate
for the petitioner.

JASPAL SINGH, J.(ORAL)

By virtue of the instant civil revision under Article 227 of Constitution of India, petitioner has sought setting aside the order dated 28th March, 2017 passed by Additional Civil Judge (Senior Division), Malerkotla whereby an application filed by the petitioner seeking permission to plead/defend the case on behalf of respondent No.2 i.e. Ajit Singh, has been dismissed.

The contention of learned counsel for the petitioner while assailing the impugned order dated 28th March, 2017 is that the impugned order is absolutely against the letter and spirit of various provisions contained under Order XXXII, Rule 15 of Code of Civil Procedure (for short 'Code' only). In fact, it was mandatory upon the Court to follow procedure prescribed under Order XXXII, Rules 1 to 14 of the Code including to conduct an inquiry to find out the mental condition/infirmity of defendant-Ajit Singh or to determine that he is incapable of protecting his interest in the suit.

Undoubtedly, respondent/plaintiff moved an application under Order XXXII, Rules 1 and 2 of the Code seeking permission to file the suit

as an diligent person seeking fixation of maintenance and Rs.10,000/- per

month as well as for creation of charge thereof on the disputed property. During the pendency thereof, an application under Order XXII Rule 15 CPC was filed which has been dismissed through the impugned order.

A glance at the impugned order transpires that before passing neither an inquiry has been conducted nor Ajit Singh-defendant/respondent No.2 has been examined by the Court before passing the impugned order. Thus, impugned order dated 28th March, 2017 cannot be said to be in confirmity with the mandatory provisions contained under Order XXXII, Rules 1 to 14 of the Code. As such, the same is not sustainable in the eyes of law.

In the light of what has been discussed above, impugned order dated 28th March, 2017 is *set aside* and trial Court is directed to pass a speaking order on the application moved by the petitioner under Order XXXIII, Rules 1 and 2 of the Code after complying with the provisions contained under Order XXXII, Rules 1 to 14 of the Code that too after hearing the other party as well as by way of passing the speaking order.

Since this order has been passed in the absence of respondents, if they feel so aggrieved, they shall be at liberty to approach this Court.

Disposed of.

May 09, 2017

m. sharma

**(JASPAL SINGH)
JUDGE**

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No