

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-6752-2015

Date of Decision:- 01.08.2017

Asha Devi

.....Appellant

Versus

Ajit Singh

.....Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Harish Jain, Advocate,
for the petitioner.

RITU BAHRI, J. (Oral)

Petitioner-defendant has come up in revision against the order dated 10.08.2015 (Annexure P-5), passed by learned Civil Judge (Jr. Division), Panipat, whereby an application under Order 6 Rule 17 for filing the contested written statement, filed on behalf of the petitioners, has been dismissed.

In the present case, after issuing notice, the respondent was served, however, none has appeared on his behalf.

Perusal of impugned order (Annexure P-5) shows that the petitioner-defendant had filed written statement on 27.08.2011 in which

he admitted the claim of the respondent-plaintiff. Each para of the plaint has been admitted by the defendant. The application for amendment has been dismissed by observing that the defendant by way of amendment is wanting to replace his earlier statement to which is totally consistent pleadings.

Reference, at this stage, can now be made to a judgment of Co-ordinate of this Court passed in **Nathu Ram Vs. Ram Chander and others, 2007(5) R.C.R. (Civil) 386** whereby an application for amendment was declined. As per the case of defendant No.6, he suffered a decree in favour of his daughter (defendant No.5) on 19.07.1989. Thereafter, his daughter suffered another decree in favour of her nephew i.e. another son of defendant No.6 on 27.09.1995. The suit for declaration was filed on 06.01.1998 challenging the consent decree suffered by defendant No.6 on 19.07.1989 and the consequent decree dated 27.09.1995 suffered by defendant No.5. In the said suit, a written statement was filed on behalf of defendant Nos.5 and 6 admitting the claim of the plaintiff. Later on, when defendant No.6 appeared as witness as DW-1, he denied the filing of the written statement along with his daughter Krishna. Thereafter, the application was filed for filing a written statement on the ground that he was never engaged Sh. Jitender Thakur as his counsel neither he had instructed him to file the written statement on his behalf. In fact, his signatures were obtained by plaintiff's counsel on blank paper when he went to Fatehabad and the written statement has been prepared on the blank papers. Consequently, this Court while accepting the plea of the petitioner/defendant No.6 has allowed the

revision petition. In paragraph No.5 of the judgment, the Court has held as under:-

“Recently, in a judgment reported as “2006(4) R.C.R. (Civil) 248: (2006-3) 144 PLR 437, Gautam Sarup v. Anand Sarup and others” considering the various judgments, it was found that the defendant has a right to prove the admission made in the written statement is not correct and erroneous. However, to prove that such admission is not correct and is erroneous, an opportunity has to be given to the said defendant. It was so held in the following manner:-

"Keeping in view the principles laid down in the aforesaid judgments, I am of the opinion that defendant No. 6 has a right to prove that the admission made in the written statement dated 30.03.2000 is not correct and erroneous. If a person proves that the admission is not binding for one or more reason, the Court can refuse to take into consideration the admission allegedly made. Such rights to prove admission wrongly made can be exercised only if an opportunity is given to the parties to enter into the play field and to prove such admission as wrong, incorrect and erroneous. If the amendment is to be declined, an opportunity to prove that the admission is wrong is not even made available which, in my opinion, would be unjustified."

Applying the ratio of above-said judgment to the facts of the present case, the present revision petition is allowed. Impugned order dated 10.08.2015 (Annexure P-5), passed by the Civil Judge (Jr. Division), Panipat, is hereby set aside and the petitioner-defendant is hereby allowed to file the amended written statement. However, it shall be open to the trial Court to adjudicate upon the question along with main suit itself whether the first written statement filed by the present petitioner admitting the claim of the plaintiff, was a voluntary act or not and in the light of the said finding to decide the main suit.

Parties through their counsel are directed to appear before the learned trial Court for further proceedings, in accordance with law.

August 01, 2017
naresh.k

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No