

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

C.R. No.1177 of 2018

Date of Decision.20.02.2018

Suresh Kumar Gupta

.....Petitioner

Vs

Umesh and others

....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Alok Jain, Advocate and
Mr. S.C. Mhane, Advocate
for the petitioner.

AMIT RAWAL J.(ORAL)

The present revision petition is directed against the order dated 22.02.2017 whereby the application moved under Order 10 Rule 1 CPC read with Order 8 Rule 1 CPC for appearance before the Court has been disposed of.

Mr. Jain, learned counsel appearing on behalf of the petitioner submits that in the pending suit seeking specific performance of agreement to sell, an application dated 19.08.2015 (Annexure P-5) invoking the provisions of Order 10 Rule 1 CPC read with Section 151 and Order 8 Rule 1 CPC was moved by making specific averment in para 2 with regard to filing of vakalatnama by one Shri Narender Singla on behalf of defendant Nos.1, 4, 5, 7, 8, 13 to 27 and 29 (hereinafter called as “first set of defendants”) and another vakalatnama for defendant Nos.16, 17, 18, 19, 22, 23, 24, 25, 26 and 27 (hereinafter called as “second set of defendants”) but the Court below on the basis of the statement of Mr. N.K. Singla disposed of the application whereas the statement was only confined to the first set of defendants.

Mr. Alok Jain, assisted by Mr. S.C. Mhane, learned counsel appearing for the petitioner submits that the Court below has not followed the provisions of Rule 1 and 2 of Order 10 CPC. There has not been adherence to the aforementioned provisions which would not only help the Court but also to the parties at variance for proper adjudication of the *lis*. The purpose of admission and denial is to cut down the litigation on the facts and documents, which are not in dispute, enabling the parties to prove the same in accordance with law, thus, the order is not sustainable in the eyes of law.

I have heard learned counsel for the petitioner, appraised the paper book as well as the impugned order. It would be apt to refer para 2 and 3 of the application and the impugned order, which are as under:-

“2. That in the proceeding dated 19.05.2014 appearance of Shri Narender Singla on behalf of defendant Nos.1, 4, 5, 7, 8, 13 to 27 and 29 and a fresh vakalatnama was filed on 20.3.2015 on behalf of defendant Nos.16, 17, 18, 19, 22, 23, 24, 25, 26 and 27. The said vakalatnamas are on the record.

3. That from the perusal of the said vakalatnama filed by Shri N.K. Singla it is apparently clear that the vakalatnamas do not bear signatures and thumb impressions of the defendants and that the same are forged and fabricated signatures. From the bare perusal of the signatures and thumb impressions on the vakalatnama and on the served summons on the defendants it is clear that the same do not tally with each other and are not signed by the same person who has signed and thumb marked the vakalatnama. The plaintiff has come to know about this

fact on inspection of the file.”

Order dated 22.02.2017

*Present: Sh. S.C. Mahna, Advocate for plaintiff.
Sh. N.K. Singla, Advocate for defendants No.1, 4,
5, 7, 8, 13 to 27 and 29.
Defendant No.28 ex parte vide order dated
19.5.2015.*

*In response to the application under Order 10 Rule 1, the
defendant from whom Sh. N.K. Singla had given vakalatnama,
appeared in person and submitted that they had engaged Sh.
N.K. Singla, Advocate. In view of the submission made by the
defendant No.1, 4, 5, 7, 8, 13 to 27 and 29, application under
Order 10 Rule 1 is disposed of. Further perusal of the case file
indicates that application under Order 7 Rule 11 CPC is
pending adjudication and so far reply to the application is not
filed by the plaintiff. Now, case stands adjourned to 19.4.2017
for filing reply to the application under Order 7 Rule 11 CPC.*

NDOH:19.4.2017

Purpose:Reply

February 22, 2017”

sd/-

(Tarun Singal)

Addl. Civil Judge (Sr. Divn)

Faridabad (UID No.HR0229)

On going through para No.2 of the application, it is crystal clear that the trial Court had only confined the contents of the application to the vakalatnama filed by Mr. N.K. Singla vis-a-vis first set of defendants and not on account of second set of defendants. The Legislature in its wisdom had made the provisions in the Code of Civil Procedure so simple and comprehensive enabling the Court to cut down period of litigation by complying with the provisions of Order 10 Rule 1 and 2, Order 11 and

Order 12 CPC. The aforementioned provisions have been incorporated for enabling the Court to frame the issues under Order 14 CPC only when the parties after undertaking exercise of admission, denial and production of documents are at variance with regard to certain points.

It has come to my notice that in most cases trial courts are not adhering to the aforementioned provisions. Even otherwise, Code of Civil Procedure had gone through amendment from time to time i.e. in 1976 and 2002. Provisions of Order 13 Rule 1 CPC were also amended whereby it was made mandatory requirement that before framing of the issues, both the parties shall produce all the documentary evidence in original where the copies thereof have been filed along with plaint or written statement. But neither the Courts nor the counsels representing the parties are adhering to the same. Non-adherence to the aforementioned provisions leads to occurrence of various situations and one example of such situation is as under:-

“Normally in a suit filed claiming ownership on the basis of Will or a Will is propounded by the defendant, the original of the same is not accompanied and during the stage of trial, an application is moved for leading additional evidence/secondary evidence on the ground that aforementioned document was lost or not traceable or not in their custody.”

There may be many other situations or examples which I need not delve upon but the fact of the matter is that focus of the Court is digressed from the main suit to the adjudication of miscellaneous applications. Article 227 of the Constitution of India reads as under:-

“227. Power of superintendence over all courts by the High Court

(1) Every High Court shall have superintendence over all courts and

tribunals throughout the territories interrelation to which it exercises jurisdiction

(2) Without prejudice to the generality of the foregoing provisions, the High Court may

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein: Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.”

The supervisory power has not been in dispute since time immemorial but owing to the amendment caused in Section 115 CPC, an occasion arose before the Hon'ble Supreme Court for entertaining the revision petition directed by the aggrieved party under Article 227 of the Constitution of India in **Surya Dev Rai Vs. Ram Chander Rai and others** **2003(6) SCC 675.**

In view of the ratio decidendi culled out by Hon'ble Supreme Court in **Surya Dev Rai's case** (supra), while exercising power of superintendence, I deem it appropriate to dispose of the revision petition with the following directions to the District and Sessions Judges of States of Punjab, Haryana and Union Territory, Chandigarh:-

(i) To sensitize the Judicial Officers to follow the procedure as

envisaged under the Civil Procedure Code i.e. to ascertain at the first hearing of the suit from each party or his pleader with regard to admission or denial and production of documents and call upon the parties to undertake the aforementioned exercise in order to curtail the longevity of the trial and focus only to the issues on which the parties are at variance.

(ii) No suit should proceed further before framing of the issues in case either of the parties to the *lis* does not place on record original documents on which reliance has been placed.

(iii) I have already issued directions in Civil Revision No.355 of 2018 with regard to entertaining the suit noticing non-compliance of Order 6 Rule 14-A CPC. It has come across that many suits are filed by giving fake or incomplete addresses of the plaintiff or defendant resulting into delay in adjudication of the suit. In other words, suit is kept pending for service of the parties. The directions laid in the aforementioned revision petition shall also be read as part of the directions given in the present revision petition.

Now coming to the controversy involved in the present revision petition, I am of the view that the order under challenge cannot be sustained, for, it has not addressed the issue raised in the application particularly qua second set of defendants. The impugned order is set aside and the revision petition is allowed. The matter is remitted back to the trial Court to decide the application (Annexure P-5) afresh in accordance with law.

The parties along with their counsel shall be present before the

Court below on 12.03.2018.

This order be communicated to the Registrar Judicial of this Court with regard to convey only the directions contained in the order to the subordinate courts.

(AMIT RAWAL)
JUDGE

February 20, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	Yes