

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

**CR No. 2292 of 2017
Date of Decision: 23.8.2018**

Meena Rani @ Minni @ Meena Sood and another

.....

Petitioners

v.

Anita Rani Sood and others

.....**Respondents**

CORAM HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Vijay Sharma, Advocate,
for the petitioners.

Ms. G.K. Turka, Advocate,
for the respondents

AMOL RATTAN SINGH, J. (ORAL)

The present petition has been filed invoking jurisdiction under Article 227 of the Constitution of India, seeking quashing of the order dated 7.3.2017 passed by the Civil Judge (Junior Division), Rajpura, by which the word “cannot”, used in the earlier order of that Court dated 03.03.2017, has been corrected to read as “must”.

Upon query to learned counsel for the respondents as to how the import of the entire order can be completely reversed by the court, she points to the order passed on 03.03.2017 (copy Annexure P-3), which reads as follows :

“Learned counsel for the plaintiff stated that he wants to lead evidence in rebuttal because defendant produced Will although during plaintiff evidence but burden of proof to prove the execution of Will was upon defendants and defendants discharged their burden in defendant evidence itself and when the burden of proof regarding the Will was on

the defendants, then how the plaintiff could have adduced the evidence regarding ingenuity of the Will and hence opportunity cannot be given to plaintiff.

On the other side, learned counsel for defendant submitted that as the Will was presented during the plaintiff evidence and plaintiff had sufficient opportunity to discharge the burden of proof of Will although burden to prove the Will was on the defendants.

After considering the rival submission of the parties and going through the case file, this Court is of the considered view that in the interest of just and for the fair decision of case, plaintiff cannot be given opportunity to prove or dis-prove the Will in question. Now the case is adjourned to 6.3.2017 for statement of expert.”

She submits that the impugned order dated 7.3.2017 is obviously stating correctly that the word “cannot” is a typographical error, in view of the fact that even in the first paragraph of the order dated 3.3.2017, even while noticing the contentions of counsel for the plaintiff (respondent herein), to the effect that the plaintiffs want to lead evidence in rebuttal, the last line thereof says that the plaintiffs' contention is that opportunity cannot be given to him to lead such evidence.

She submits that very obviously the word “cannot” in that context is completely and wholly irrational and illogical and is a typographical error, which has again been repeated in last paragraph of the order thereby changing the nature of the order, which mistake has been correctly rectified by the trial Court vide the impugned order dated 07.03.2017.

Upon learned counsel for the petitioners submitting that the amendment has been made without any opportunity granted to the petitioners-defendants, to oppose the correction made in the impugned order, which changes the complete nature thereof, learned counsel for the respondents refers to Section 152 of the Code of Civil Procedure, which reads as follows :-

“152. Amendment of judgments, decrees or orders – Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.”

She submits that in the aforesaid circumstances very obviously it was only an 'accidental slip' that led to the word “cannot” being written in the earlier order dated 3.3.2017 instead of word “must”, as has been held by the trial Court in the impugned order.

Though I agree with learned counsel for the respondents, on the seeming absurdity of the word 'cannot' in the said order, in the context of what had been sought by counsel for the plaintiff before the trial Court, however, in view of the fact that learned counsel for the petitioners insists that the petitioners must be given an opportunity to at least argue on the fact that the word “cannot” was not an accidental slip in the order dated 3.3.2017 and that the trial Court has erred in holding so in the impugned order, without noticing any contention on behalf of the petitioners-defendants, consequently, the impugned order is set aside with the petitioners-defendants given one opportunity to argue on the issue of whether the word “cannot” occurring in the order dated 3.3.2017 is an accidental slip/omission/ typographical error on the part of the trial Court, or whether the word was actually meant by the Court in the context in which it was passed.

The trial Court would hear the petitioners on that issue and then pass a fresh order on whether or not the word “cannot” in the aforesaid order dated 3.3.2017 was an accidental slip/typographical error, or whether it was actually meant to be written as “cannot” only and not “must”.

That question would be decided by the trial Court on the next date

of hearing itself, after hearing both, learned counsel for the petitioners-defendants, as also the respondents-plaintiffs.

Disposed of.

(AMOL RATTAN SINGH)
JUDGE

23.8.2018

Ashwani/dinesh

Speaking/Reasoned	Yes/No
Reportable	Yes/No