

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

Civil Revision No.3722 of 2017

Date of Decision: 06.08.2018

Sandeep (minor)Petitioner
Vs
Ram Chander and anotherRespondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Deepak Girotra Advocate
for the petitioner.

Mr. D.K. Tuteja, Advocate
for respondent No.1.

Mr. R.T. Redhu, D.A.G., Haryana
for respondent No.4.

RAJ MOHAN SINGH, J.

[1]. Petitioner/Sandeep (minor) has preferred this revision petition against the order dated 05.08.2015 passed by the Civil Judge (Sr. Divn.) Rohtak whereby defence of defendant No.3/petitioner was struck off and order dated 06.04.2017 passed by the Civil Judge (Sr. Divn.) Rohtak whereby application under Order 32 Rule 3 read with Section 151 CPC filed by Parmeshwari (Bua) wife of Ram Karan for her appointment as guardian on behalf of the minor/petitioner was rejected.

[2]. Brief facts of the case are that plaintiff Ram Chander filed a suit for declaration with consequential relief of permanent

injunction against the defendants. Defendants No.1 and 2 are the biological parents of defendant No.3/petitioner (minor). The plaintiff challenge the adoption deed No.40 dated 26.08.2013 and release deed No.1189 dated 26.08.2013 as outcome of fraud committed by defendants No.1 and 2. The adoption deed of adopting defendant no.1/minor petitioner was claimed to be illegal and was sought to be declared as null and void and not binding upon the rights of the plaintiff/alleged adoptive father of defendant No.3/petitioner.

[3]. In the aforesaid suit, defendant No.3/petitioner (minor) was impleaded through defendant No.1 i.e. natural/biological father. Written statement was filed by defendants No.1 and 2 in their own capacity. No written statement was filed by defendant No.1 on behalf of minor defendant No.3. It was mentioned in the written statement that the minor defendant No.3 is not residing with defendants No.1 and 2, rather he is residing with his Bua namely Parmeshwari in village Kasni Disrict Jhajjar. It was also mentioned that the plaintiff has sued defendant No.3 wrongly through defendant No.1.

[4]. Reply to the stay application was also filed by defendants No.1 and 2 in their own capacity without filing any reply on behalf of minor defendant No.3. The interest of the minor was not represented by defendants No.1 and 2 in any

manner.

[5]. Perusal of the record would show that presence of one Sh. Naresh Kumar Advocate was shown on behalf of defendant No.3, who also did not file any written statement on behalf of defendant No.3. It could not be demonstrated on record as to who had engaged Sh. Naresh Kumar, Advocate on behalf of defendant no.3. In the event of engaging him by defendant No.1 on behalf of defendant No.3, there was no occasion for defendants No.1 and 2 not to file joint written statement to the plaint.

[6]. Learned counsel for the petitioner vehemently submitted that keeping in view the attending facts and circumstances of the case, minor defendant No.3 has not been represented by respondent No.1/defendant No.1 as well as by the plaintiff in the suit proceedings and consequently his defence was struck off. It is true that object and scope of Order 32 Rule 3 CPC has to be seen whether the minor was effectively represented in the litigation. The mandatory non-compliance of the provisions of Order 32 Rule 3 CPC would not render the decision void in the absence of any prejudice caused to the minor. If the minor is represented by a guardian *ad-litem* and his interest is properly watched, then it cannot be said that he has not been effectively represented.

[7]. On the other hand, learned counsel for respondent No.1 tried to convince the Court that the aforesaid Sh. Naresh Kumar Advocate was engaged by Parmeshwari Bua of the minor defendant no.3.

[8]. I have considered the submissions made by learned counsel for the parties.

[9]. Even after alleged engagement of Sh. Naresh Kumar, Advocate on behalf of defendant No.3, no written statement was filed. At the time of engagement of aforesaid Advocate, there was no authority in favour of Parmeshwari to engage an Advocate on behalf of defendant No.3. Defence of defendant No.3 was struck off vide order dated 05.08.2015, even in the presence of Sh. Naresh Kumar, Advocate. Thereafter an application under Order 32 Rule 3 CPC was filed by Parmeshwari on 20.08.2015 for her appointment as guardian on behalf of defendant No.3 to represent his cause in the suit. The said application has been declined vide the impugned order dated 06.04.2017.

[10]. Evidently, Parmeshwari is *equi distant* from the plaintiff as well as defendant No.1 being real sister of them. In the present case, though the minor was impleaded through his biological father, who has not come forward to file any written statement or any reply to the stay application on behalf of minor

defendant No.3. One Sh. Naresh Kumar, Advocate has appeared on behalf of minor defendant No.3 and in his presence defence of minor defendant No.3 was struck off. It could not be explained as to who had engaged Sh. Naresh Kumar Advocate on behalf of minor defendant No.3.

[11]. At this stage collusion at the instance of any of the party to the litigation cannot be ruled out. After striking of defence of the minor vide order dated 05.08.2015, an application was moved by Smt. Parmeshwari for her appointment as guardian on behalf of the minor on 20.08.2015. The said application was rejected vide the impugned order dated 06.04.2017.

[12]. In **Baldev Singh vs. Sukhdev Singh, 2006(3) R.C.R. (Civil) 76; Raj Kumar vs. Rohtash, 2010(3) PLR 187** and **Virat Pal and others vs. Mam Raj and others, 2011(2) PLR 250**, it was held that if the guardian was not appointed as per the provisions in terms of Order 32 Rule 3 CPC, suit is liable to be dismissed as the provision is mandatory.

[13]. The ratio of Full Bench in **Amrik Singh, etc. vs. Karnail Singh etc., 1974 PLR 744** is not disputed, but the instinct of connivance as is apparent in the present case makes the present case distinct and would cause material prejudice to the minor defendant No.3 as his defence has already been

struck off vide order dated 05.08.2015 even in the presence of an Advocate, whose presence was marked on his behalf, but his engagement on his behalf remained unexplained.

[14]. Keeping in view the *inter se* relationship between the parties and the nature of litigation, the interest of the minor has to be protected by appointing a person, who is having no interest in the property. Since as per stand of defendant No.1 himself the minor is living with his Bua/Parmeshwari in the different village, therefore, it would be just and appropriate to allow Smt. Parmeshwari to be impleaded as guardian on behalf of minor defendant No.3 to represent the cause of minor in the pending suit.

[15]. For the reasons mentioned above, impugned orders dated 05.08.2015 and 06.04.2017 passed by the Civil Judge (Sr. Divn.) Rohtak are hereby set aside. Revision petition is allowed. Smt. Parmeshwari wife of Sh. Ram Karan, resident of village Kasni, Tehsil Jhajjar is ordered to be impleaded as guardian on behalf of minor defendant No.3. Liberty is granted to her to file written statement on behalf of minor defendant No.3 and contest the suit in accordance with law.

August 06, 2018

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No