

**CR-2217-2020 WITH 8519 CII-2020 WITH
CM-8642-CII-2020 & CM-8644-CII-2020**

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

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(PROCEEDINGS THROUGH V.C.)

**CR-2217-2020 WITH CM-8519 CII-2020 WITH
CM-8642-CII-2020 & CM-8644-CII-2020**

DATE OF DECISION: FEBRUARY 25th, 2021

Satwant Singh and another

.....Petitioners

VERSUS

Harjit Kaur and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Vikas Bahl, Sr.Advocate with
Ms.Aakritee Raj, Mr.Rajinder Singh,
Mr. Lakhwinder Singh, Mr.Moin Khan and
Mr. Nikunj Verma, Advocates,
for the petitioners.

Mr. A. S. Chandhiok, Sr.Advocate with
Mr. Aashish Chopra, Ms.Manmeet Arora,
Ms. Rupa Pathania, Ms.Shweta Kakkad,
Mr.Tarang Gupta, Ms.Priya Aggarwal and
Mr. Ritambhara Narang, Advocates,
for the respondents.

AUGUSTINE GEORGE MASIH, J.

CM-8519-CII-2020

Application is allowed as prayed for subject to all just
exceptions.

Documents, Annexures P-15 to P-25, appended alongwith the
application are taken on record.

CM-8642-CII-2020 & CM-8644-CII-2020

Applications are allowed as prayed for subject to all just exceptions.

Documents, Annexures R-1 to R-4, appended alongwith the application are taken on record. Exemption is also granted from filing certified/typed copies of said documents.

CR-2217-2020

This revision petition under Article 227 of the Constitution of India has been preferred, impugning the order dated 18.10.2019 (Annexure P-1) passed by the Additional Civil Judge (Senior Division), Patiala in a civil suit, whereby application preferred by Satwant Singh, petitioner No.1 herein (defendant No.2 in the civil suit) under Order VIII Rule 9 CPC dated 12.12.2000, seeking permission to file written statement on behalf of Pure Drinks (New Delhi) Limited-petitioner No.2 (defendant No.1 in the civil suit) (hereinafter referred to as “the Company”), has been dismissed. Accordingly, prayer has been made by the petitioners to set-aside the said order being against law and facts of the case and principles of natural justice and for allowing the application dated 12.12.2000.

2. Learned senior counsel for the petitioners submits that the impugned order dated 18.10.2019 (Annexure P-1) is not sustainable as the Court below has not appreciated the pleadings in the civil suit as pleaded by the petitioners in correct manner and has proceeded to pass the order on the basis of conjectures and surmises. It is asserted that in the application under Order VIII Rule 9 CPC filed by petitioner No.1, specific objection was raised to the resolution purportedly passed by the Board of Directors, authorizing S.Ajit Singh-respondent No.2 to file written statement on behalf

of petitioner No.2-Company. During the course of arguments, the Court permitted respondent No.1 to place on record and rely upon certain documents, which were neither previously filed nor do they find mentioned in the suit. There was no occasion for the petitioners to carry out any admissions/denials in respect of such additional documents, which have been erroneously taken into consideration as admitted documents by the trial Court. The issues, which have been raised in the application, have not been adjudicated upon. It is asserted that without there being any adjudication on the issue with regard to representing petitioner No.2-Company, the application of petitioner No.1 for permission to file written statement on behalf of petitioner No.2 has been decided. Vide the impugned order, the trial Court has finally determined the rights of respondent No.2 and petitioner No.2 relating to filing of the written statement for and on behalf of the Company. This has been done without application of mind and appreciation of relevant circumstances. It has been specifically urged in the written statement that there is no resolution or authority placed on record authorizing respondent No.2 to represent petitioner No.2 Company. In view of the dispute and manifest variation in facts, which were *ex facie* evident from the facts and circumstances of the case, the authority to represent petitioner No.2 was clearly a triable issue and without framing the issue to this effect, rejection of the application of the petitioners summarily is unsustainable. He also asserts that there was no deliberate delay on the part of petitioner No.1 in filing the application dated 12.12.2000 as is being said that two years have been taken by petitioner No.1 to file the said application under Order VIII Rule 9 CPC. This, he asserts, is in the light of the fact that there has been admissions on the part of the parties to enter into a settlement

for which talks were under process so that the dispute amongst the family could be resolved. It is in this process that the delay has occurred. The trial Court has failed to appreciate that a specific objection has been raised by petitioner No.1 in his written statement that the suit has been filed and was being prescribed by respondent Nos.1 and respondent No.2 in active collusion and connivance with each other. The reply, which has been filed by respondent No.2 itself, demonstrate that respondent No.2, who has purportedly filed reply on behalf of petitioner No.2, has simply accepted the contentions as stated in the plaint. Respondent No.2 is assisting respondent No.1 in taking over the control and management of petitioner No.2-Company. It was incumbent upon the Civil Judge to frame a preliminary issue on the authority of respondent No.2 or petitioner No.1 to represent petitioner No.2-Company as the stand taken by defendant No.3 as regards the allegations levelled by respondent No.1 were in complete variation with the stand taken by petitioner No.1 in the written statement. Learned senior counsel has asserted that civil Court has failed to appreciate that none of the documents, which have been referred to in the impugned order and has been recorded to have been unequivocally and inevitably admitted by petitioner No.1 is uncalled for and these documents relate to particular issues and there is no admission on the part of petitioner No.1 in affirming the status of respondent No.2 as the Chairman and Managing Director of petitioner No.2-Company. He has referred to various documents and pleadings in support of his contentions, which have been placed on record.

3. It is asserted by learned senior counsel for the petitioners that although the Court has referred to the pleadings in the application under

Order VIII Rule 9 CPC relating to a plea that an issue be framed as to which

of the defendants is authorized to represent defendant No.1-Company but no answer has been given to the same in the impugned order. It has neither been stated that the said issue is not required to be framed nor has it been stated that the issue is required to be framed. It is not even mentioned that the said aspect for framing of issue is kept open. He asserts that this is an important aspect, which the trial Court has ignored and in this regard he submits that in Para 1 of the plaint, it has been stated that S.Ajit Singh, defendant No.3 is the Chairman and the Managing Director and as such defendant No.1 Company is hereby sued through S.Ajit Singh, which fact is denied by the petitioners in the written statement and has specifically stated that petitioner No.1/defendant No.2 is in fact the Chairman of defendant No.1-Company. Defendant No.3 has no authority to represent defendant No.1-Company. He, thus, contends that the impugned order on this score itself deserves to be set-aside. He asserts that it is the duty of the Court to frame specific issue on all points raised in the pleadings and, thus, the omission in the impugned order to state as to whether said issue is to be framed or not nor keeping it open for a subsequent/relevant stage amounts to commission of a grave illegality causing serious prejudice to the case of the petitioners.

He has attacked the order passed by the trial Court by assailing the observations of the Court that the documents, which have been referred to in the impugned order, have not been rebutted by petitioner No.1 in any manner, which is illegal and against law, especially when it was not ascertained whether petitioner No.1 or respondent No.2 was authorized to file written statement and represent petitioner No.2-Company. This was the moot point in issue and the same could be decided only after an issue is

framed and the evidence is led by the parties. The observations/findings given at the stage of deciding the application under Order VIII Rule 9 C.P.C. are absolutely premature, uncalled for and without jurisdiction. He contends that out of eight documents referred to in the impugned order, those documents and resolution dated 08.06.1998 have neither been annexed nor even remotely referred to in the plaint nor any averment with respect to the same has been made therein. Referring to Order VIII Rule 14 CPC, he asserts that the documents regarding which there is no pleadings and are not entered in the list alongwith the plaint cannot be admitted without the leave of the Court. Reference has also been made to the zimni orders, which have been passed when the matter was under active consideration for settlement amongst the parties to the suit as the parties were making efforts for settlement of the dispute. Prayer has, thus, been made for setting-aside the impugned order and for allowing the application dated 12.12.2000 as moved by petitioner No.1.

4. On the other hand, learned senior counsel for the respondents has asserted that the revision petition deserves to be dismissed at the threshold for the reason that petitioner No.1 has approached the Court with unclean hands and, thus, has abused the process of law. This has been asserted with reference to the not placing on record of the documents in the impugned order of the trial Court. Some of the documents, which have been placed on record do not form part of the trial Court record and petitioner No.1 has not sought leave of the Court for the said purpose.

It has been asserted that petitioner No.1 has suppressed the material facts such as filing of a civil suit bearing No.102/1997 titled as 'Satwant Singh and another Vs. S.Ajit Singh' before the Senior Civil Judge,

Delhi, seeking relief of declaration that petitioner No.1 is the Chairman of the Company, which suit was dismissed for non-prosecution on 13.08.2001. Thereafter the application for restoration of the suit was dismissed by the trial Court on 25.01.2003. Appeal was preferred by the petitioners against the order dated 25.01.2003, where an objection having been raised by the Company that petitioner No.1 was not authorized to represent it. The Appellate Court deleted the Company as a party in the appeal vide order dated 15.05.2004. He, therefore, asserts that the present petition deserves to be dismissed on this score. Reliance has been placed upon the judgments of the Hon'ble Supreme Court in Manohar Lal Vs. Ugrasen and others, 2010 (11) SCC 557 and Shashi Singla Vs. State of Haryana, 1998 (2) RCR (Civil) 259 (DB) to contend that petitioner No.1 suppressed the material facts and did not disclose all facts and, thus, is not entitled to any relief while invoking extra ordinary jurisdiction under Article 226 and 227 of the Constitution of India.

It has been asserted that the application under Order VIII Rule 9 CPC was not maintainable in law as there is already a written statement on record on behalf of the Company filed by S.Ajit Singh on 16.10.1998. No provision of law permits filing of another written statement if there is already a written statement filed by a defendant. It is asserted that application dated 12.12.2000, which has been preferred by petitioner No.1, was an after thought after an inordinate delay of two years. Multiple opportunities have been taken by petitioner No.1 to file the written statement. Respondent No.1 was constrained to file an application dated 29.08.2000, seeking the closure of right of petitioner No.1 to file written statement and it is thereafter that the written statement was filed on

12.12.2000.

As regards the documents, which were not brought on record and have been referred to in the impugned order, it is asserted that the said documents could only be brought on record at a later stage as respondent No.1 being plaintiff could not anticipate placing on record the said documents at the time of filing of suit. The said documents could be, at a subsequent date, placed on record with the leave of the Court. Learned senior counsel for the respondents, with reference to the documents, which have been taken into consideration by the trial Court while passing the impugned order, asserts that the same comprised of judicial orders passed by the Company Law Board as well as the civil and criminal Courts in Delhi, which documents have not been disputed by petitioner No.1 and, therefore, no issue can be framed in this regard, as prayed for. He asserts that petitioner No.1 is arrayed as defendant No.2 in the civil suit, where his written statement is already on record. No prejudice would be caused to him with the dismissal of the application as he would have full opportunity to defend himself in the civil suit and put forth his case. In any case, he asserts that an application for framing of issues, as has been prayed in the present petition, has been filed by the petitioners which is pending before the trial Court. Accordingly, prayer has been made for dismissal of the present revision petition.

5. I have heard counsel for the parties and with their assistance have gone through the impugned order as also the pleadings and documents placed on record.

6. Dealing first with submission of learned senior counsel for the respondents with regard to the prayer for dismissal of the revision petition

on the ground of suppression and non-disclosure of the facts as also of non-placing on record the documents, suffice it to say that this Court does not find any reason and ground to come to such a conclusion that petitioner No.1 had intentionally done so or has he tried to mislead the Court.

7. During the course of arguments, learned senior counsel for the petitioners has very fairly and rightly stated that there can be only one written statement on behalf of the defendant and, therefore, he would not press the application on behalf of petitioner No.1 for permission to file written statement on behalf of the Company. Rather, he is only seeking framing of issue by way of present revision petition in the civil suit as to whether petitioner No.1 or respondent No.2 is authorized to represent the Company. In the light of the above, the aspect which requires to be gone into is with regard to the observations of the trial Court in the impugned order dated 18.10.2019 with regard to the fact that Ajit Singh is the Chairman and Managing Director of the Company with reference to the copy of the notices and orders apart from the resolutions and minutes of the meeting, which have been referred to in the said order.

8. Two aspects have been highlighted by counsel for the petitioners. One was with regard to the prayer made in the application under Order VIII Rule 9 CPC for permission to file written statement on behalf of the Company or to frame an issue as to which of the defendants is authorized to represent the Company.

9. First aspect having been given up, what is now required to be considered is the aspect of framing of issue as to which of the defendant is authorized to represent the Company.

10. A perusal of the impugned order dated 18.10.2019 would show

that the learned trial Court has primarily dealt with the aspect as to the written statement, which has been filed by S.Ajit Singh, has to be accepted or not. It is in this context that the order has been passed. The Court has rightly observed that it did not find any ground justified enough to permit filing of a second written statement on behalf of the Company by the petitioners when there was already one on the record.

11. The prayer, as made by the petitioners with regard to the aspect of framing of an issue as to which of the defendants is authorized representing the Company has not been dealt with by the trial Court in the impugned order. It is the duty of the Court to frame proper issues on all points made out from the pleadings. Even if a party could not press an issue at the initial stage of framing of issues made out from the pleadings, there is no bar to the same at the later stage. It has been brought to the notice of the Court that the application for framing such an issue is already pending before the trial Court and, therefore, it would be open for the trial Court to take a decision thereon on the basis of the pleadings of the parties in accordance with law.

The present revision petition is disposed of accordingly.

**February 25th, 2021
khurmi**

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No