

CR No. 4084 of 2023 (O&M) &
CR No.4094 of 2023 (O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) CR No. 4084 of 2023 (O&M)
Date of decision : 14.9.2023
...

Ram Ji Dass
.....Petitioner

vs.

Kulwant Rai Sethi and others
.....Respondents

2) CR No. 4094 of 2023 (O&M)
Date of decision : 14.9.2023
...

Kulwant Rai Sethi and another
.....Petitioners

vs.

Ram Ji Dass and others
.....Respondents

CORAM : HON'BLE MR JUSTICE SANJAY VASHISTH

Present: Mr. Rajesh Sethi, Advocate,
Mr. Arun Biriwal, Advocate and
Mr. Ajay Pal Singh Malhi, Advocate
for the petitioner in CR 4084-2023

Mr. Sachin Gupta (Ladwa), Advocate for
the petitioner(s) in CR 4094-2023
...

SANJAY VASHISTH, J. (Oral)

1. By this common order, I intend to dispose of CR-4084-

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2023, titled as Ram Ji Dass vs. Kulwant Rai Sethi and others **and**; CR-4094-2023, titled as Kulwant Rai Sethi and another vs. Ram Ji Dass and others, as both these petitions have arisen out of the same order dated 28.03.2023. However, for brevity, facts are being taken from CR-4084-2023.

2. By way of filing the present revision petition, i.e. CR No. 4084-2023, order dated 28.3.2023 has been challenged by plaintiff – Ram Ji Dass, whereby the Court of learned Additional Civil Judge (Senior Division), Dabwali, District Sirsa, dismissed an application for seeking exemption from personal appearance of the plaintiff and defendants No. 1 and 2 in the suit, who were directed to be present before the Court in person.

3. Plaintiff filed a suit for declaration, to the effect that he is owner in possession of the land comprised in *Khewat* No. 3328, *Khatoni* No. 3700, *Khasra* No. 350, *Killa* No. 26/2(8-6), vide *fard Jamabandi*, for the year 2016-17, situated within the revenue estate of village Chautala, Tehsil Dabwali, District Sirsa, on the basis of Will dated 22.5.1984, duly executed by Khetu Ram s/o Kapoor Singh Sethi, in favour of the plaintiff and that the mutation bearing No. 6376, entered and sanctioned on the basis of natural succession, is wrong, against law and facts, null and void, void abinitio, ineffective and inoperative upon the rights of the plaintiff.

4. In the joint written statement filed by all the defendants, facts pleaded in the plaint were admitted and it was categorically

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stated that the Will is legal and valid one and the same was duly executed by Khetu Ram, during his life time, out of his free will and volition. Defendants further pleaded that there won't be any objection from their side, if the suit property situated within the revenue estate of village Chautala, Tehsil Dabwali, District Sirsa, is transferred in the name of the plaintiff, on the basis of the said Will.

In paragraph No. 4 of the written statement, it is further pleaded by the defendants that Sh. Khetu Ram has since died in the year 1988 in New York and had also executed a Will dated 22.5.1984, vide which, he bequeathed the house in favour of Tansukh Dass, two plots situated in the area of village Suchan Kotli, Tehsil and District Sirsa in favour of Kulwant Rai, amount lying deposited with M/s Madan General Store in favour of Krishan Kumar and the suit land mentioned in the head note of the plaint in favour of the plaintiff. As per Will, one shop situated in Sangria Mandi, which was in the name of Khetu Ram, in the capacity of tenant, was transferred in the name of Madan Lal @ Mahavir, during the life time of Khetu Ram.

Thus, from the pleadings of the parties i.e. plaintiff and all the defendants, **the trial Court found that the parties are not at issue**, as the written statement filed by the defendants is admitting all the claims made by the plaintiff.

5. Considering the circumstances and with its own wisdom, learned trial Court, vide its order dated 13.12.2022, directed

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the plaintiff and the defendants, to appear physically before the Court on 28.03.2023.

6. However, the plaintiff moved an application for seeking exemption from his physical appearance, rather requested for permitting him to appear through video conferencing. In the application, it was also pleaded that the plaintiff is aged 80 years and is undergoing the treatment from the doctors in New York, therefore, he is unable to travel out of the country i.e. U.S.A.

Similarly, Kulwant Rai Sethi and Madan Lal Sethi, defendants No. 1 and 2, respectively, also moved an application with similar facts, by submitting that both of them are residing in U.S.A.

7. On the date fixed, i.e. 28.03.2023, both the applications filed by the plaintiff and defendants No. 1 and 2, were dismissed by the trial Court. Therefore, plaintiff is before this Court by way of Civil Revision Petition i.e. C.R.No. 4084-2023 and defendants No. 1 and 2 vide C.R. No. 4094-2023.

8. The operative part of the order of dismissal of the applications, reads as under :-

“Heard. After going through the contents of the applications as well as contents of the plaint and written statement filed by the defendants, this Court is of the considered opinion that the plaintiff has filed the present suit and defendants have also filed almost admitted written statement, hence, they

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are required to appear before the Court physically and therefore, their request for marking their presence through video conferencing is hereby declined. Their request for exempting the physical appearance is allowed for today only and they are directed to appear physically on the next hearing which is 19.10.2023, failing which the suit can be dismissed for non-compliance of the order of Court.”

9. While referring to the operative part of the impugned order, counsel for the petitioner(s) (Plaintiff in CR-4084-2023 and defendants No. 1 and 2 in CR-4094-2023), submits that the impugned order is not a speaking one and no reasoning has been given, as to why the request for appearance of the plaintiff and defendants No. 1 and 2, cannot be accepted through video conferencing. The practice of recording of the statements or recording of the presence of certain parties via video conferencing, is very much prevalent for the last previous 3-4 years and same is accepted by the Courts, including the Hon'ble Apex Court, as well.

10. I have considered the submissions addressed by counsel for the parties and after going through the impugned order dated 28.3.2023, I am of the view that while dismissing the application and giving a direction of physical appearance, no reasoning has been mentioned by the learned trial Judge, that on what basis the request is

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not acceptable in law or in other words, for what special reason, the physical appearance of the plaintiff and defendants No. 1 and 2 is required.

11. This Court recognises the significance and essential nature of articulating rationale within any judgment or decision by any authority.

In a landmark Constitution Bench decision, *Shri Swamiji of Shri Admar Mutt etc. etc. v. The Commissioner, Hindu Religious and charitable Endowments Dept. and others., 1985 R.R.R. 147*, Chief Justice Y.V. Chandrachud, in his majority judgment, made reference to a pivotal legal maxim found in Broom's Legal Maxims (1939 Edition, page 97). This Latin maxim succinctly conveys the essence of the principle:

“Ices-sante Ratione Legis Cessat Ipsa Lex”

In the eloquent words of chief Justice Chandrachud, the English interpretation of this principle is as follows :-

“Reason is the soul of the law, and when the reason underlying any particular law ceases, so too does the law itself.”

The necessity of a reasoned order, even for a quasi-judicial body, has been underscored by the Hon'ble Apex Court in a judgment titled as *Siemens Engineering and Manufacturing of India Ltd. v. The Union of India and another, AIR 1976 Supreme Court 1785*, relevant extract of which is produced here below :-

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“It is now settled law that where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons.

*The rule requiring reasons to be given in support of an order is, like the principle of **audi alteram partem**, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law.”*

12. Considering, the submissions made by counsel for the parties, totality of the circumstances, after going through the impugned order and realising the paramount importance of a reasoned order, I deem it appropriate that the issue is worth to be remitted back to the trial Judge, for its re-decision.

13. Accordingly, the impugned order dated 28.03.2023, is set aside to the extent of declining the request as made by the plaintiff and defendants No. 1 and 2, through their application, with a further direction to decide the application afresh, in accordance with law, by passing a speaking order, within 10 days of receipt of a certified copy of order of this Court.

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14. With aforementioned observations and terms recorded therein, both the petitions are disposed of.

14.9.2023
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(SANJAY VASHISTH)
JUDGE

Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No