

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-8487-2018 (O&M)
Date of decision : 16.03.2023

Suman Makol ... Petitioner(s)

Versus

Vanita Berry and others ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sharan Sethi, Advocate for the petitioner.
Mr. Raj Kumar Gupta, Advocate for respondent No.1.

ALKA SARIN, J. (ORAL)

The present revision petition under Article 227 of the Constitution has been filed challenging the order dated 12.09.2018 whereby the application filed by the defendant-respondent No.1 for discarding the written statement filed on her behalf and for setting aside the *ex parte* order dated 29.01.2018 has been allowed.

Learned counsel for the plaintiff-petitioner would contend that the defendant-respondent No.1 was initially proceeded against *ex parte* vide order dated 15.09.2010. Thereafter, the said *ex parte* order was set aside and she filed her written statement on 25.03.2011. The lawyer continued to appear on her behalf and defendant-respondent No.1 was again proceeded against *ex parte* vide order dated 29.01.2018. Subsequently, on 09.02.2018, the present application was filed for discarding the written statement filed on

her behalf with permission to file a fresh written statement and for setting aside the *ex parte* order dated 29.01.2018. Learned counsel would further contend that the defendant-respondent No.1 has denied her signatures on the earlier written statement and now by way of filing a fresh written statement she wants to resile from the admissions made in the earlier written statement. It is further the contention of learned counsel that the said application could not have been allowed without first holding a fact-finding inquiry as to whether her signatures were actually appended on the original written statement and whether she had engaged the counsel. In support of his contention, he has relied upon the judgment of this Court in the case of **Gautam Sarup Vs. Anand Sarup & Ors. [2002 (2) ICC 796]**.

Per contra, learned counsel appearing on behalf of the defendant-respondent No.1 has contended that the original written statement was not signed by the defendant-respondent No.1 and that she had never engaged the counsel. It has further been pointed out by learned counsel that the signatures on the application (Annexure P-2) and the ones on the original written statement appended with the revision petition (Annexure P-1) are totally different and the difference is visible to the naked eye. Learned counsel has further contended that infact he would also want an inquiry to be held in the present case.

Heard.

In the present case serious allegations have been made by the defendant-respondent No.1 regarding not having engaged the counsel and not having signed the written statement (Annexure P-1) appended with the

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present petition. In the case of **Gautam Sarup** (supra), which is similar on facts, this Court had ordered the holding of fact finding inquiry. This Court is also of the view that before taking a decision, a fact finding inquiry should be held as to whether the defendant-respondent No.1 ever engaged the counsel - Mr. Rajan Khetarpal - and as to whether the defendant-respondent No.1 signed the written statement (Annexure P-1) and thereafter on the basis of the outcome of the fact finding inquiry, the application be decided afresh on merits.

Accordingly, the impugned order is set aside and the present revision petition is allowed. The Trial Court shall at the first instance hold a fact finding inquiry as to whether the defendant-respondent No.1 ever engaged the counsel - Mr. Rajan Khetarpal - and as to whether the defendant-respondent No.1 signed the written statement. Thereafter the Trial Court shall proceed to decide the application filed by the defendant-respondent No.1 for discarding the written statement filed on her behalf and for setting aside the *ex parte* order dated 29.01.2018, on merits and in accordance with law.

Disposed off accordingly. Pending applications, if any, also stand disposed off.

16.03.2023
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO