

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

(119)

RSA-221-1993

Date of decision: - 11.03.2024

Punjab Wakf Board**....Appellant****Versus****Chanan Singh****.....Respondent****CORAM : HON'BLE MR. JUSTICE VIKAS BAHL**

Present:- Mr. J.S. Bhatia, Advocate
for Mr. Gurbachan Singh Bhatia, Advocate,
for the appellant.

Mr. Atul Jain, Advocate
for the respondent.

VIKAS BAHL, J. (ORAL)

1. Present appeal has been filed by the plaintiff/Punjab Wakf Board (hereinafter referred to as “the plaintiff-Board) against the judgment of the trial Court dated 22.08.1990, vide which the suit filed by the plaintiff-Board for possession of agricultural land situated in the revenue estate of village Kutbewal, Tehsil Sultanpur Lodhi H.8 No.56 vide jamabandi 1982-83 Khewat No.147, Khatoni No.255, Khasra Nos.8//14/8-8, 15/8-8 total 16 kanals, has been dismissed. Challenge is also to the judgment dated 04.09.1992, vide which the appeal filed by the plaintiff-Board against the said judgment has been decided by rejecting the plaint filed on behalf of the plaintiff-Board under Order 7 Rule 11 CPC.

2. Brief facts of the case are that the plaintiff-Board had filed a suit for possession on the plea that the plaintiff-Board was the exclusive owner of the suit land and the respondent-defendant/Chanan Singh (hereinafter referred to as “the respondent-defendant”) had forcibly occupied the suit land belonging to the plaintiff-Board for the last eight years and the possession of the respondent-defendant was that of a trespasser and thus, the plaintiff-Board was entitled to seek possession of the same. It has further been averred in the plaint that the respondent-defendant had been requested several times to hand over the possession of the suit land to the plaintiff-Board, but the respondent-defendant had been putting off the same on one pretext or the other and for the last one week he had flatly refused to accede to the genuine request of the plaintiff. On the basis of the said pleadings of the parties, the possession of the suit property was sought. The respondent-defendant filed written statement and had raised preliminary objections to the effect that the suit was not filed by an authorized person and that the trial Court had no jurisdiction to entertain the same. On merits, the ownership of the plaintiff-Board was not disputed, but it was stated that the respondent-defendant was in possession of the suit land as a tenant under the plaintiff-Board.

3. On the basis of the pleadings of the parties, two issues were framed, which have been reproduced herein below: -

- “(1) Whether the defendant is cultivating the suit land as a tenant? OPD.
- (2) Relief.”

4. The evidence was first led by the defendant since the onus of proving Issue No.1 was on the respondent-defendant and the respondent-defendant himself appeared in the witness box as DW-1. In rebuttal on

behalf of the plaintiff-Board, Abdul Latif Khan, Estate Officer Punjab Wakf Board, Kapurthala had appeared and had stated that he had the authority to give evidence on behalf of the plaintiff-Board and he tendered into evidence copy of jamabandi Ex.P1, Khasra girdawari Ex.P2 to 5, copy of notification Ex.P6. The trial Court after taking into consideration the evidence of the parties and the documents on record came to the conclusion that the respondent-defendant was not cultivating the suit land as a tenant under the plaintiff-Board and thus, decided Issue No.1 in favour of the plaintiff-Board and against the respondent-defendant. In para 7 of the judgment of the trial Court, it was observed that the plea taken by the respondent-defendant that he was a tenant of the suit land stood falsified from his own statement, inasmuch as, he admitted that he was not in possession of any Patnama from the plaintiff-Board, nor was he in possession of any receipt regarding the payment of rent and had further in his cross-examination stated that he had not filed any application before the plaintiff-Board for getting the suit land on rent and thus, the primary issue was decided in favour of the plaintiff-Board by the trial Court. However, the suit of the plaintiff was dismissed solely on account of non-compliance of the provisions of Order 6 Rule 14 & 15 CPC, inasmuch as, it was observed that since the plaint did not bear the signatures of the officer authorized to file the same nor did the verification of the plaint bear the signatures of the said authorized person, thus, the suit was legally defective and was not instituted as per the law and was accordingly dismissed.

5. Against the said judgment and decree dated 22.08.1990, the

plaintiff-Board filed an appeal and thereafter, an application under Order 6 Rule 17 CPC was also filed. The Additional District Judge, Kapurthala rejected the said application under Order 6 Rule 17 CPC, in which, it was averred that inadvertently, the plaint could not be signed and verified by the Administrator and that no objection regarding the same was taken in the written statement filed by the defendant and that the plaintiff-Board wanted to sign and verify the plaint by making the said amendment. The Additional District Judge, Kapurthala however did not accept the plea of the plaintiff-Board and rejected the plaint under Order 7 Rule 11 CPC.

6. Aggrieved against the said judgments dated 22.08.1990 and 04.09.1992, the plaintiff-Board has filed the present Regular Second Appeal before this Court.

7. Learned counsel for the plaintiff-Board has submitted that in the present case, in the written statement, no objection was taken by the respondent-defendant to the effect that the plaint was not signed or verified by the plaintiff-Board and accordingly, no issue on the said aspect was framed. It is further submitted that in case any such objection had been taken, the plaintiff-Board would have immediately rectified the same and that when the plaintiff-Board learnt about the said aspect i.e. at the time of passing of the judgment dated 22.08.1990, the plaintiff-Board immediately in para No.9 of the grounds of appeal, made a specific prayer that the plaintiff-Board be allowed to sign the pleadings and verification of suit or in alternative permission be granted to file an amended plaint duly signed and verified and also thereafter moved a separate application under Order 6 Rule 17 CPC in this regard. It is stated that the main issue

with respect to the plaintiff-Board being the owner and the respondent-defendant not being a tenant and being a trespasser, had been decided in favour of the plaintiff-Board and the said finding had attained finality and thus, it would not be in the interest of justice to dismiss the suit of the plaintiff-Board solely on technicalities.

8. In support of his arguments, learned counsel for the plaintiff-Board has relied upon the judgment of the Hon'ble Supreme Court in case titled as *Uday Shankar Triyar Vs. Ram Kalewar Prasad Singh and another*, passed in Civil Appeal NO.6701 of 2005 [arising out of SLP (C) No.22578 of 2003], decided on 10.11.2005 and also on the judgment of the Hon'ble Supreme Court in case titled as “*United Bank of India Vs. Naresh Kumar and others*”, reported as 1997 AIR (Supreme Court) 3. Further reliance has been placed upon a judgment of the Co-ordinate Bench of this Court in case titled as “*Ismail Khan Vs. Bir Singh and another*”, reported as 2015(3) PLR 288 and the Co-ordinate Bench of this Court in case titled as “*Harbhajan Singh Vs. Mohan Singh*”, reported as 1992(2) PLR 482 as well as that of “*Ram Piari Vs. Collector, Sub Division, Abohar*”, reported as 1993(3) PLR 36 and also of the Division Bench of this Court in case titled as “*Sat Parkash Vs. State of Haryana*”, reported as 2002(2) S.C.T. 950. On the aspect of no plea having been raised in the written statement with respect to the plaint and the verification having not been signed, learned counsel for the plaintiff-Board has relied upon a judgment of the Division Bench of the Calcutta High Court in case titled as “*Himjit Construction Vs. Tarun Sarkar*”, reported as 1985 AIR (Calcutta) 200, to argue that since no such

objection had been taken, thus, the respondent-defendant cannot be permitted to raise the said objection at the time of final arguments. It is submitted that at any rate, the judgment of the appellate Court dated 04.09.1992 deserves to be set aside and the application filed by the plaintiff-Board under Order 6 Rule 17 deserves to be allowed and the matter deserves to be re-decided by the appellate Court after granting effective opportunity to the plaintiff-Board to sign the plaint as well as the verification by an authorized person.

9. Learned counsel appearing for the respondent-defendant has submitted that the judgments of both the Courts below are in accordance with law and deserve to be upheld. It is further submitted that it is not in dispute that neither the plaint nor the verification has been signed by the plaintiff-Board and for the said purpose, he has referred to a copy of the record, the correctness of which has not been objected to by learned counsel for the plaintiff-Board. It is further submitted that the provisions of Order 6 Rules 14 & 15 are mandatory and the same is apparent from the usage of the term “shall” occurring in both the said provisions. It is stated that once, neither the plaint has been signed by the plaintiff-Board nor the same has been verified, thus, the same cannot be construed as a plaint filed by the plaintiff-Board. It is argued that an objection had been taken in the written statement to the effect that the suit had not been filed by an authorized person and thus, the plea raised by the plaintiff-Board that no such objection had been taken, is misconceived. It is further argued that the plaintiff-Board had not moved any application under Order 14 Rule 1 CPC for framing of an additional issue with respect to

the pleadings and thus, cannot raise a plea to the effect that the issue has not been framed.

10. This Court has heard learned counsel for the parties and has perused the paper-book.

11. It is apparent from the pleadings of the parties that the plaintiff-Board is the owner of the above-said property measuring 16 kanals. The said fact has been admitted by the respondent-defendant in his written statement. The material issue framed by the trial Court was to the effect as to whether the respondent-defendant was cultivating the suit land as a tenant, which issue the trial Court had held in favour of the plaintiff-Board and against the respondent-defendant by observing that the respondent-defendant had not been able to show that he was a tenant under the plaintiff-Board and thus, the plea raised by the plaintiff-Board to the effect that the respondent-defendant was a trespasser was found to be correct. The sole ground on which the suit of the plaintiff-Board has been dismissed by the trial Court is that the plaint and the verification have not been signed by the plaintiff-Board. The application for amendment under Order 6 Rule 17 CPC filed by the plaintiff-Board before the appellate Court had also been dismissed and the appellate Court had rejected the plaint of the plaintiff-Board under Order 7 Rule 11 CPC on the said plea alone.

12. Before adjudicating the issue, as to whether the rejection of the plaint/dismissal of the suit on the above-said ground alone, is legal or not, it would be relevant to refer to the law laid down on the said aspect.

13. The Hon'ble Supreme Court in **Uday Shankar Triyar case**

(supra) while considering a similar situation observed that Order 6 Rule 14 CPC requires that every pleading shall be signed by the party and his pleader and after considering the said requirement of law, it was observed that it has always been recognized that if a plaint is not signed by the plaintiff or his duly authorized agent due to any bona fide error, the defect can be permitted to be rectified either by the trial court at any time before judgment, or even by the appellate court by permitting appropriate amendment, when such defect comes to its notice during hearing. Para 16 of the said judgment is reproduced herein below: -

“16. An analogous provision is to be found in Order 6 Rule 14 CPC which requires that every pleading shall be signed by the party and his pleader, if any. Here again, it has always been recognized that if a plaint is not signed by the plaintiff or his duly authorized agent due to any bona fide error, the defect can be permitted to be rectified either by the trial court at any time before judgment, or even by the appellate court by permitting appropriate amendment, when such defect comes to its notice during hearing.”

The appeal in the above-said case before the Hon'ble Supreme Court was filed by the landlord challenging the order dated 28.07.2003 passed by the Patna High Court, vide which, the Patna High Court had permitted appellant No.2 therein (with respect to whom no vakalatnama had been filed) to cure the defect so that the appeal instituted on behalf of appellant No.2 was considered to be duly instituted. In the said case, after the eviction order was passed by the trial Court, two appellants filed an appeal although the vakalatnama accompanying the appeal was only signed by appellant No.1 and there was no vakalatnama filed on behalf of the appellant No.2 i.e. DCC and since appellant No.1 had died and there was no vakalatnama on behalf of appellant No.2, thus,

the appellate Court i.e. Additional District Judge had dismissed the appeal on the said ground. As stated herein above, the learned Single Judge of the Patna High Court allowed the appeal filed by the second appellant and permitted him to rectify the defect, which order was upheld by the Hon'ble Supreme Court. The Hon'ble Supreme Court had considered the provisions of Order 41 Rule 1 CPC, which also require every appeal to be preferred in the form of a memorandum, to be signed by the appellant or his pleader and while considering the said case had also specifically referred to Order 6 Rule 14 CPC and had made the observation as has been reproduced herein above. In para 18 of the said judgment, it was also observed that in the circumstances of the said case, the appellate court i.e. Additional District Judge should have accepted the application for amendment and substitution filed on behalf of DCC and after considering the said aspect found that the High Court was justified in setting aside the dismissal and restoring the first appeal to the file of the Additional District Judge with a direction to decide the matter on merits.

14. The law laid down in the above-said judgment would also apply to the facts of the present case, which would be detailed herein after.

15. The judgment of the Hon'ble Supreme Court in the above-said case was followed by a Co-ordinate Bench of this Court in **Ismail Khan's case (supra)**. The relevant portion of which is reproduced herein below: -

“6. xxx xxx xxx xxx

The issue which arises for consideration of this Court is as to whether at a later stage the petitioner/ defendant no. 1 can be

*permitted to sign written statement already filed when the case is at the stage of his evidence. An identical issue came up for consideration before Hon'ble the Supreme Court in **Uday Shankar Triyar's case (supra)**, wherein it was opined that if the plaint or written statement is not signed by a party on account of a bonafide error, the defect can be directed to be rectified either by the trial court at any time before the judgment or even by the Appellate Court. Certain exceptions have been carved out. Relevant paras of the judgment are extracted below:-*

“16. An analogous provision is to be found in Order 6 Rule 14 CPC which requires that every pleading shall be signed by the party and his pleader, if any. Here again, it has always been recognized that if a plaint is not signed by the plaintiff or his duly authorized agent due to any bona fide error, the defect can be permitted to be rectified either by the trial court at any time before judgment, or even by the appellate court by permitting appropriate amendment, when such defect comes to its notice during hearing.

xxx xxx xxx xxx

7. To similar effect are the earlier judgments of this Court in Smt. Mukhtiar Kaur and Harbhajan Singh's cases (supra). Once it has been opined by Hon'ble the Supreme Court that the defect of non-signing of written statement by the defendant is the procedural one, which can be rectified not only during the course of trial but even at the appellate stage, in my opinion, the rejection of the prayer of the petitioner/ defendant no. 1 to sign written statement already filed and to file affidavit in support thereof is erroneous, hence, the order deserves to be set aside.”

16. The Hon'ble Supreme Court in **United Bank of India case (supra)** had observed that in cases where suits are instituted or defended on behalf of a public corporation, public interest should not be permitted to be defeated on a mere technicality and that the Court has sufficient power under the Code of Civil Procedure to ensure that injustice is not done to any party who has a just case and that as far as possible a substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable. The relevant portion of the said

judgment is reproduced herein below: -

“8. In this appeal, therefore, the only question which arises for consideration is whether the plaint was duly signed and verified by a competent person.

9. In cases like the present where suits are instituted or defended on behalf of a public corporation, public interest should not be permitted to be defeated on a mere technicality. Procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause. There is sufficient power in the Courts, under the Code of Civil Procedure, to ensure that injustice is not done to any party who has a just case. As far as possible a substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable.

xxx xxx xxx xxx

11. xxx xxx xxx xxx If, for any reason whatsoever, the courts below were still unable to come to this conclusion, then either of the appellate courts ought to have exercised their jurisdiction under Order 41 Rule 27 (1) (b) of the Code of Civil Procedure and should have directed a proper power of attorney to be produced or they could have ordered Sh. L.K. Rohatgi or any other competent person to be examined as a witness in order to prove ratification or the authority of Sh. L.K. Rohatgi to sign the plaint. Such a power should be exercised by a court in order to ensure that injustice is not done by rejection of a genuine claim.”

17. To a similar effect, the Co-ordinate Bench of this Court in

Ram Piari's case (supra) had observed as under: -

“But that apart, we are of the opinion that even if there is some slight defect or irregularity in the filing of the affidavit, the appellant should have been given an opportunity to rectify the same.” In **Karam Singh v. Ram Rachhpal Singh and others (supra)**, it was held, “The requirement in Rules 14 and 15 that a plaint should be signed and verified by a party is purely procedural and the party can make good the deficiency at a later stage and, therefore, rejection of the plaint on the ground that it was not signed and verified by the plaintiff or his Mukhtiar but was signed by the plaintiff's pleader would not be valid and the proper course for the Court would be to give an opportunity

to the plaintiff or his Mukhtiar to sign and verify the plaint."

A perusal of the said judgment would show that it has been repeatedly held by the Hon'ble Supreme Court as well as by this Court that the requirement under Order 6 Rules 14 & 15 CPC that a plaint should be signed and verified by a party is purely procedural and the party can make good the deficiency at a later stage and therefore, rejection of the plaint on the ground that it was not signed and verified by the plaintiff would not be valid and the proper course for the Court is to give an opportunity to the plaintiff to sign and verify the plaint and that the said principle applies to a higher degree where a suit has been filed by a public corporation or public body, as in the present case. It has also been repeatedly been held that a substantive right should not be defeated on account of a procedural irregularity and that public interest should not be permitted to be defeated on a mere technicality.

18. Further, the Division Bench of this Court in **Himjit Construction case (supra)** had observed that in case no objection had been taken in the reply with respect to a particular fact, then, the defendant should not be allowed to raise the objection on the said aspect.

The relevant portion of the said judgment is reproduced herein below: -

*"4. We have carefully considered the two points thus raised by Mr. Bhattacharyya, but we find little substance in either of the same. So far as the first point raised by Mr. Bhattacharyya is concerned, **since the defendant at no point of time in his written statement disputed the authority of Sri Tarun Sarkar to present the plaint on behalf of the plaintiff or to verify the same, such a point, in our opinion, should not have been allowed to be raised at all.** It should not have been allowed for the simple reason that the plaintiff had no previous notice of any such dispute so that he could produce material evidence to meet the same. It was rightly pointed out by the*

two Courts below that the power of attorney in favour of Sri Tarun Sarkar was filed in Court and it was there on the record until delivery of judgment though it was not formally proved and exhibited for the simple reason that on the pleadings of the parties no such dispute had at all been raised. In that view, we propose to support the view of the learned Judges in the Courts below more on the ground that such a point was not available to the defendant on his pleadings.”

19. No contrary law has been cited by learned counsel for the respondent-defendant.

20. In the present case, the plaint, a copy of which has been produced before this Court by the learned counsel for the respondent-defendant, and which has not been disputed by learned counsel for the plaintiff-Board, shows that the same bears the stamp of the Administrator, Punjab Wakf Board, Ambala Cantt., both at the end of the plaint as well as where the verification finishes. In the written statement, no objection had been taken that the plaint or verification had not been signed by the plaintiff-Board, although, an objection had been taken that the suit had not been instituted by an authorized person. The objection raised as has been highlighted by the learned counsel for the respondent-defendant cannot be stated to be an objection to the effect that the plaint and verification had not been signed by the plaintiff-Board as these two are separate objections. On account of no objection having been taken, no issue to the effect as to whether the plaint and the verification had been signed by the plaintiff-Board or not and its consequence was framed, rather, only two issues were framed i.e. (i) “whether the defendant is cultivating the suit land as a tenant? OPD and (ii) “Relief.” In case any such objection had been taken in the written statement or any issue on the

same had been framed, then, the plaintiff-Board could either have sought amendment of the plaint or could have sought to rectify the said curable defect at an earlier stage. It is further apparent from the record that after the passing of the judgment by the trial Court, rejecting the suit of the plaintiff-Board solely on the ground that the plaint and verification had not signed by the plaintiff-Board, the plaintiff-Board in the grounds of appeal dated 28.09.1990 had made a specific prayer that the plaintiff-Board may be allowed under Order 6 Rule 17 CPC to amend the pleadings so as to sign the plaint and verification. Para No.9 of the said grounds of appeal is as under: -

“9) That the appellant/plaintiff may be allowed under Order 6 rule 17 C.P.C. to sign the pleadings and verification of suit or in alternative the permission be granted to file an amended plaint duly signed and verified.”

It would be relevant to note that subsequently, an application under Order 6 Rule 17 CPC, was also filed, vide which a specific prayer had been made to the effect that inadvertently, the plaint could not be signed and verified by the Administrator and no objection regarding the same had been taken in the written statement and that the defect was curable. Para Nos.4 to 6 of the said application are as under: -

“4. That inadvertently the plaint could not be signed and verified by the Administrator and this objection was also never taken in the written statement. Now the plaintiff Board wanted to sign and verify the plaint by way of amendment of the plaint.

5. That the proposed amendment does not alter the nature of the case. In fact the proposed amendment is required to remove a procedural defect in this plaint.

6. That it is therefore prayed that the amendment may be allowed in the interest and fair play of justice.”

Learned appellate Court instead of allowing the said application and permitting the plaintiff-Board to carry out the said amendment, dismissed the application illegally and in violation of the law laid down in the above-said judgment.

21. It would also be relevant to note that in the present case, Abdul Latif Khan, Estate Officer, who was an authorized person, had appeared in the witness box as PW and had supported the case of the plaintiff-Board. As per the notification (Ex.P6), which was duly proved on record, the Office of the Administrator, Punjab Wakf Board Ambala Cantt. had delegated his powers of the Board to all the Estate Officers to institute or defend suits on behalf of the plaintiff-Board. The suit was instituted on 17.02.1989 and was pursued on behalf of the Punjab Wakf Board upto 22.08.1990 and thereafter, the appeal was also pursued on behalf of the plaintiff-Board and so is the present Regular Second Appeal being pursued for all these years. The said facts clearly show that the suit was instituted on behalf of the plaintiff-Board and for the benefit of the plaintiff-Board and the non-signing of the plaint and the verification by the plaintiff-Board was apparently a bona-fide mistake and the same should have been permitted to be rectified by the Courts the moment it came to their notice and at any rate, after an application under Order 6 Rule 17 CPC was filed by the plaintiff-Board before the Additional District Judge, Kapurthala. The same having not been done has caused a travesty of justice, inasmuch as, the findings of the trial Court on the substantial question, which is in issue, has been held to be in favour of the plaintiff-Board, inasmuch as, the plaintiff-Board has been held to be

owner of the property and the respondent-defendant has been held to be not a tenant. The said finding has not been set aside by the Additional District Judge, Kapurthala and the suit of the plaintiff-Board and the appeal therefrom has been dismissed on a mere technicality, which was curable. The arguments raised on behalf of learned counsel for the respondent-defendant to the effect that the plaintiff-Board could have moved an application under Order 14 Rule 1 CPC for framing of an additional issue, is misconceived, inasmuch as, it is the argument of the counsel for the plaintiff-Board that it was on account of a bona-fide error that the said signatures were left and they were not even aware of the said fact as no objection was taken regarding the same in the written statement and no issue regarding the same had been framed and it is only when the plaintiff-Board learnt about the said bona-fide mistake that in the grounds of appeal, the prayer regarding the same was made and subsequently a specific application under Order 6 Rule 17 was also made. The question, thus of the plaintiff-Board moving an application under Order 14 Rule 1, did not arise and rather non-framing of the said issue shows that the respondent-defendant never objected to the plaint and the verification not having being signed by the plaintiff-Board.

22. Keeping in view the above-said facts and circumstances, the present appeal is partly allowed and the judgment of the first appellate Court is set aside and the Additional District Judge, Kapurthala is directed to re-decide the appeal afresh. The application filed by the plaintiff-Board under Order 6 Rule 17 CPC before the learned lower appellate Court is allowed and the learned Appellate Court would grant

effective opportunity to the plaintiff-Board to amend the plaint so as to enable the plaintiff-Board to get the plaint and verification signed by an authorized person. In case of the plaintiff-Board complying with the said directions, the first Appellate Court would proceed to decide the matter on merits, in accordance with law, after hearing all the parties concerned.

23. The parties are directed to appear before the first appellate Court on 01.04.2024 and the first appellate Court is requested to expedite the proceedings and to decide the first appeal, as expeditiously as possible, preferably, within a period of four months from the date the parties appear before the first appellate Court as the present suit was instituted in the year 1989.

March 11, 2024
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes