



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

**CR-4651-2024 (O&M)
Decided on: 03.09.2024**

**ROSHAN LAL THROUGH TESTAMENTARY
HEIR BHARAT BHUSHAN**

...Petitioner

Versus

DURGA DASS THROUGH NATURAL HEIRS AND ANOTHER

...Respondents

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CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Ms. Ritam Aggarwal, Advocate
for the petitioner.

RITU TAGORE, J.

1. This common order shall dispose of the above-mentioned
revision petition(s), arising from two orders (Annexure P-10 and Annexure



P-11) respectively, passed by learned Civil Judge (Junior Division) Bhathinda on 11.07.2024, in the suit titled 'Durga Dass through natural heirs and another Vs. Roshan Lal through testamentary heir'.

2. In brief the facts are that LR's of deceased Durga Dass son of Ram Narain and Makhan Lal son of Ram Narain (since deceased) respondents No. 1 and 2, instituted a suit for separate possession by way of partition (Annexure P-1), against the petitioner/defendant Roshan Lal son of Radha Krishan, through his testamentary heir Bharat Bhushan. The petitioner/defendant filed the written statement (Annexure P-2) and counter claim (Annexure P-3). The respondents/plaintiffs filed the reply (Annexure P-4) to the counter claim. Thereafter, petitioner filed replication (Annexure P-5). After closing of the pleadings, issues were framed, and case was posted for evidence of respondents-plaintiffs. After completion of the respondent/plaintiffs' evidence, case was scheduled for the petitioner's/defendant evidence, when an objection was raised through an application (Annexure P-6), regarding non-maintainability of the suit on account of plaint being defective, not signed and verified by all legal heirs of Durga Dass and Makhan Lal except by one LR Sandeep Jindal, respondent No.1(b). Further, *Vakalatnama* of the counsel was not signed by all the legal heirs, impleaded as plaintiffs. Consequently, dismissal of the suit was sought on the ground that it was no suit in the eyes of law in the absence of proper authorization. The respondents/plaintiffs filed the reply (Annexure P-7), pleading that the defect is technical and had occurred inadvertently. Thereafter, respondents moved an application (Annexure P-8) for amendment of plaint under Order 6 Rule 17 of Code of Civil Procedure,



1908 (hereinafter referred to as the 'CPC'). Petitioner/defendant, filed the reply (Annexure P-9), opposed the application. The learned Civil Judge passed two separate orders of even date on 11.07.2024 (Annexure P-10 in CR No.4651 of 2024 and P-11 in CR-4653 of 2024), and allowed the application for amendment of plaint, moved by respondents/plaintiffs and dismissed the application moved by the petitioner for the dismissal of the suit, necessitating the filing of above mentioned revisions.

3. Learned counsel for the petitioner, challenging the orders dated 11.07.2024 (Annexure P-10 in CR No.4651 of 2024 and P-11 in CR-4653 of 2024), urged that learned trial Court failed to appreciate that application for the amendment of the plaint was moved belatedly, when the case was posted for the evidence of the petitioner and further that suit was inherently defective. In fact, it was no suit instituted in the eyes of law on behalf of all the LR's, having not signed the plaint and lacked proper authorization on behalf of all the plaintiffs-LR's on the *Vakalatanama* of the counsel. Learned counsel submits that learned trial Court's observation that defect is merely procedural and curable, is indefensible in the eyes of law, indeed the defect was major and incurable. In this regard, reference was made to Order 6 Rule 17 of CPC, stating the provisions specifically stipulates that no amendment shall be allowed after the commencement of trial, unless the party seeking amendment makes out a case of due diligence. Learned counsel states that facts of the present case do not demonstrate exercise of due diligence on the part of the respondents/plaintiffs. It is further submitted that without due authorization on behalf of all the LR's/plaintiffs in favour of the counsel, the plaint was allowed to be presented, which was *non-est*, as it did not fulfill



the mandate of Order 3 Rule 1 and 4 CPC. It is stated that allowing the application has adversely affected the rights of the petitioner, as amendment would relate back to the date of filing the suit. A prayer is, therefore, made to allow both the revisions and suit of the respondents should be dismissed.

4. I have heard learned counsel for the petitioners and have gone through the paper book.

5. It is apparent from the record that the plaint (Annexure P-1) was not signed by all the ten LRs and even *Vakalatnama* of the counsel was not signed by all of them. The learned trial Court on the prayer of respondents/plaintiffs, allowed them to amend their plaint, permitting them to sign the plaint and *Vakalatnama* by all the LRs and dismissed the application of the petitioner seeking dismissal of the suit on account of the aforesaid defect. The learned trial Court, while allowing the application under Order 6 Rule 17 read with Section 151 CPC, relied upon the judgment of Hon'ble the Apex Court in ***Uday Shankar Triyar Vs. Ram Kalewar Prasad Singh and Anr., 2006(1) SCC 75*** and the decision of co-ordinate Bench of this Court in ***Ismail Khan Vs. Bir Singh and another, Civil Revision No.1158 of 2015***, concluded in para 11, as follows:-

“11. In view of the above discussion and the law laid down by the Honorable High Court and the Honorable Apex Court (supra), this court is of the considered opinion that the non-signing of pleadings/vakalatnama is a procedural defect. The proposed amendment is necessary for determining the real controversy between the parties and will not cause any prejudice to the opposite party, nor will it change the nature of the suit. Therefore, in the interest of justice, the present application is allowed, subject to the payment of costs of Rs. 1000/- to be



made by the plaintiffs to the defendants. The application stands disposed of accordingly.”

6. While dismissing the application for rejection of suit, learned trial Court held that since the application under Order 6 Rule 17 read with Section 151 CPC had been allowed, this application had become infructuous.

7. Two questions therefore arise for consideration-

i) whether the suit is defective or invalid, so to say it is no suit in the eyes of law;

ii) whether such defect can be permitted to be cured?

8. To answer these questions, it would be apposite, to go through the provisions of Order 6 Rule 17, Order 6 Rule 14 and Order 3 Rule 4 CPC:-

“Order 6 Rule 17

Amendment of pleadings.—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties: Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

Order 6 Rule 14.

Pleading to be signed.—Every pleading shall be signed by the party and his pleader (if any): Provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf

Order 3 Rule 4.

Appointment of pleader.—(1) No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognised agent or by some other person duly authorised by or under a power-of-attorney to make such appointment.



(2) Every such appointment shall be filed in Court and shall, for the purposes of sub-rule (1), be deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client.

Explanation. -For the purposes of this sub-rule, the following shall be deemed to be proceedings in the suit,—

(a) an application for the review of decree or order in the suit,

(b) an application under section 144 or under section 152 of this Code, in relation to any decree or order made in the suit,

(c) an appeal from any decree or order in the suit, and

(d) any application or act for the purpose of obtaining copies of documents or return of documents produced or filed in the suit or of obtaining refund of moneys paid into the Court in connection with the suit.

(3) Nothing in sub-rule (2) shall be construed—

(a) as extending, as between the pleader and his client, the duration for which the pleader is engaged, or

(b) as authorising service on the pleader of any notice or document issued by any Court other than the Court for which the pleader was engaged, except where such service was expressly agreed to by the client in the document referred to in sub-rule (1).

(4) The High Court may, by general order, direct that, where the person by whom a pleader is appointed is unable to write his name, his mark upon the document appointing the pleader shall be attested by such person and in such manner as may be specified by the order.

(5) No pleader who has been engaged for the purpose of pleading only shall plead on behalf of any party, unless he has filed in court a memorandum of appearance signed by himself and stating—

(a) the names of the parties to the suit,

(b) the name of the party for whom he appears, and

(c) the name of the person by whom he is authorised to appear:

Provided that nothing in this sub-rule shall apply to any pleader engaged to plead on behalf of any party by any other pleader who has been duly appointed to act in Court on behalf of such party.”

09. Perusal of the aforesaid provisions would indicate that power to allow the amendment is wide enough to be exercised at any stage in the interest of justice. The purpose is to minimize the litigation. In this regard reference can be made to **Abdul Rehman and another vs. Mohd. Ruldu**

and others, 2012(4) R.C.R. (Civil) 481.



10. At this stage, it is further desirable to go through the decisions, dealing with such defects in the pleadings and authorization to file the suit.

11. *In Bihar State Electricity Board Vs. Bhowra Kankanee Collieries Ltd. 1982 AIR SC 60* the *Vakalatnama* was not filed with the Appeal Memo, as the defect was not removed in spite of grant of an opportunity, the High Court dismissed the appeal as also the application for restoration. Hon'ble the Supreme Court, while allowing the appeal against the said dismissal, held thus :-

"6. Undoubtedly, there is some negligence but when a substantive matter is dismissed on the ground of failure to comply with procedural directions, there is always some element of negligence involved in it because a vigilant litigant would not miss complying with procedural direction more so such a simple one as filing Vakalatnama. The question is whether the degree of negligence is so high as to bang the door of court to a suitor seeking justice. In other words, should an investigation of facts for rendering justice be peremptorily thwarted by some procedural lacuna ?

7. It is not for a moment suggested that a party can ignore peremptory orders of the Court for making the appeal ready for hearing the appeal within a specified time. But having said this, it must also be borne in mind that the procedure was devised for doing justice and not for thwarting the same. In such a situation, civil courts have leaned in favour of repairing the harassment, inconvenience or damage to the other side by some order of costs. But to take the view that failure to comply with an order for filing Vakalatnama would result in dismissal of the appeal involving a fairly good sum is to put such procedural requirement on a pedestal tall enough to hinder the course of justice. We find it difficult to be a party to this proposition. Hence we are inclined to interfere."

12. In *Shastri Yagnapurushdasji & Ors. Vs. Muldas Bhundardas Vaishya & Anr. AIR 1966 Supreme Court 1119*, the *Vakalatnama* was in favour of 'X', but the memorandum of appeal was signed and filed by 'Y'.

The High Court permitted 'X' to sign the memorandum of appeal, in order to



remove the irregularity. Hon'ble the Supreme Court upheld the order of the High Court, observing that :

"Technically, it may be conceded that the memorandum of appeal presented by Mr. Daundkar suffered from the infirmity that respondent No. 1 had signed his Vakalatnama in favour of the Government Pleader and Mr. Daundkar could not have accepted it, though he was working in the Government Pleader's office as an Assistant Government Pleader. Even so, the said memo was accepted by the office of the Registrar of the Appellate Side of the High Court, because the Registry regarded the presentation of the appeal to be proper; the appeal was in due course admitted and if finally came up for hearing before the High Court. The failure of the Registry to invite the attention of the Assistant Government Pleader to the irregularity committed in the presentation of the said appeal cannot be said to be irrelevant in dealing with the validity of the contention raised by the appellants. If the Registry had returned the appeal to Mr. Daundkar as irregularly presented, the irregularity could have been immediately corrected and the Government Pleader would have signed both the memo of appeal and the Vakalatnama. It is an elementary rule of justice that no party should suffer for the mistake of the court or its office."

13. In **Kodi Lal v. Ch. Ahmad Hasan, AIR 1945 Oudh 200**, it was

held as under :-

"The governing rule no doubt is that the counsel must be duly authorised by his client to enable him to sign the appeal or to present it on his behalf. It is to be noticed that the procedure, which is laid down imposes a prohibition on the pleader to act without a valid power. It does not confer any benefit on the opponent except perhaps on the hypothesis that the actings of the counsel do not amount to acting in law. Where circumstances disclose however that the omission to file a power at the time of presentation of the appeal was accidental, it would be inequitable to visit the penalty for the omission on the litigant by insisting that his appeal must fail. Sub-rule (1) of Rule 4 Order 3 does not prohibit a Court from giving under Section 151, Civil P.C., retrospective validity to the act of a pleader who files a vakalatnama subsequently. Ordinarily a power must be filed either antecedently or simultaneously with the acting but unless it is so enjoined or any principle of law is violated or injustice is likely to occur, a statutory rule of practice should not normally be



allowed to be used as a weapon of attack. The following dictum of Bowen L.J., in (1884) 26 Ch. D. 700 may be here referred to with advantage :

"The object of Courts is to decide the rights of parties and not to punish them for mistakes which they make in the conduct of their cases by deciding otherwise than in accordance with their rights ... Courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy."

14. One of the questions that arose for consideration in ***Uday Shankar Triyar (supra)***, was whether the presentation of a Memorandum of Appeal by a *Vakil* without any authority in the shape of a *Vakalatnama* is a valid presentation or not. Incidentally, the Court was also concerned with the question whether such defect could be permitted to be rectified or not. After comparing the provisions of Order 41, Rule 1, Order 3, Rule 4 and Order 6, Rule 14 CPC, Hon'ble the Supreme Court held in para 16 as under :

"16. An analogous provision is to be found in Order 6 Rule 14 Civil Procedure Code which requires that every pleading shall be signed by the party and his pleader, if any. Here again, it has always been recognised that if a plaint is not signed by the plaintiff or his duly authorised 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."

15. In para No 17, of aforesaid decision, Hon'ble the Supreme Court laid down general principles regarding the consequence of non-compliance with the procedural requirements, which reads as follows:

"17. Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a hand-maiden to justice, should never be made a



tool to deny justice or perpetuate injustice, by any oppressive or punitive use. The well recognised exceptions to this principle are :-

- (i) where the Statute prescribing the procedure, also prescribes specifically the consequence of non-compliance.*
- (ii) where the procedural defect is not rectified, even after it is pointed out and due opportunity is given for rectifying it;*
- (iii) where the non-compliance or violation is proved to be deliberate or mischievous;*
- (iv) where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court.*
- (v) in case of Memorandum of Appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant;”*

16. In ***Subbiah Pillai alias S.S.M Subramania Pillai vs Sankarapandiam Pillai, AIR 1948 Mad 369***, the Court was of the opinion that omission to sign or verify a plaint is not such a defect as could affect the merits of a case or jurisdiction of the Court. The appellate Court ought not to dismiss the case or interfere in the decree merely because the plaint has not been signed. In ***Kalu Ram Pannalal Vs Jagannath Kalua AIR 1963 MP 151***, the Court observed that the omission by the plaintiff to sign the plaint is merely a formal error and not a serious defect which went to the root of the matter, so as to vitiate the whole institution of the suit. In such a case, the Court has power to allow the plaintiff to remedy the defect at a later stage, even though the period of limitation for filing the plaint may have already expired. In ***Karam Singh Vs Ram Racchpal, AIR 1977 HP 28***, the Court permitted the plaintiff to sign and verify the plaint where originally it was not signed by him but by his pleader alone and further observed that before the Court dismiss the plaint on this ground, the Court should provide an opportunity to the plaintiff to verify and sign the plaint.



17. In light of the above judicial decisions and the established principles of law, it is settled that the procedural defects and irregularities which are curable should not be allowed to defeat the substantive rights of the parties or to cause injustice. Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use.

18. Reverting to the facts of the case, the defect in the plaint and *Vakalatnama* of the counsel seem *bonafide* mistake on part of the respondents, which is evident from the fact that immediately after the petitioner raised an objection, the respondents/plaintiffs filed an application to rectify the defect and pleading inadvertent mistake. The omission to sign or verify a plaint is not such a defect as could affect the merits of a case or the jurisdiction of the Court. The objection in respect of the absence of the signature of other plaintiffs is too technical, same cannot be countenanced to throw away the suit of the plaintiffs filed for partition of the property. Further, the suit has already reached the advanced stage where evidence of the petitioner/ defendant is to be presented.

19. In view of the above, the trial Court was justified in allowing the amendment. Finding no merit in the petitions, both Revision petitions stand dismissed accordingly.

20. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

03.09.2024
Rimpal

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