

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.4662 of 2012 (O&M)

Date of Decision.13.08.2012

Bindu Chawdhary aged about 72 years wife of late Sh. J.C. Chowdhary,
resident of House No.57, Sector 9-A, Chandigarh

.....Petitioner

Versus

Raghubir Chand son of Sh. Ved Parkash and anotherRespondents

Present: Mr. Sanjay Joshi, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

-. -

K. KANNAN J.(ORAL)

1. The revision petition is against an order dismissing an application filed by the defendant under Order 12 Rule 5 for eliciting an admission from the plaintiff. The Court dismissed the application holding that the same could not be considered even before the issues were settled and that it was premature. The learned counsel argues that issues are framed for an adjudication only on matters that are contentious and if there is an admission already made by the plaintiff, which is sought to be elicited through the application, the order that Court may pass under Order 12 Rule 5 ought to inevitably be before the framing of issues themselves.

2. While it is desirable that admissions are elicited, if there is a basis for the same, the Court ought not to fetter itself by assuming that it can be done only after the issues are framed. There will be no

error in directing through a suitable order calling upon the plaintiff to make an admission if the defendant can establish that there is a ground for such an admission even before the issues are framed. Though I cannot agree generally with the proposition as laid down by the trial Judge, I do not think that there is still any scope for a serious prejudice for the defendant to come on revision under Article 227 of the Constitution.

3. The exercise of jurisdiction under Article 227 cannot be merely for any error. It ought to be in respect of a serious defect which borders on illegality. In this case, if the Court had refused the permission, I would clarify that the defendant would be at liberty to approach the Court with similar application without any bar after the issues are framed.

4. With this clarification, the revision petition is dismissed.

(K. KANNAN)
JUDGE

August 13, 2012
Pankaj*