

**IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA**

Civil Revision Nos.129 and 130 of 2007.

Date of decision:30.11.2007

1. Civil Revision No.129 of 2007.

Sh.V.K. Sharma ...Petitioner

Versus

Smt.Minakshi Sharma & Others ...Respondent

2. Civil Revision No.130 of 2007.

Sh.V.K. Sharma ...Petitioner

Versus

Smt.Minakshi Sharma & Others ...Respondent

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?¹

For the Petitioner: Mr.Suneet Goel, Advocate.

For the Respondents: Mr.J.R. Poswal, Advocate.

Dev Darshan Sud,J.

Both these revision petitions are being tried together as they arise of the same suit and two applications filed by the petitioner have been disposed of by a common order. The facts of the suit need not be noticed as the revisions are being disposed of on their individual merits.

¹ *Whether the reporters of Local Papers may be allowed to see the judgement?*

In a suit instituted by the respondent-plaintiff, Smt.Minakshi Sharma, the petitioner, who is a defendant, moved an application under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure with a prayer that the plaint may be rejected as, according to the defendant, no enforceable cause of action has been disclosed.

Another application under Section 151 of the Code of Civil Procedure was filed by the petitioner-defendant with a prayer that defendant No.2, Kamal Sharma, who has been sued through his father (the petitioner herein) and next friend on the ground that he is deaf and dumb, was capable of understanding the nature of the suit etc. and in the circumstances his representation through the petitioner-defendant is necessary in terms of Order 32 of the Code of Civil Procedure. The averments made in the application are that the defendant, as aforesaid, has successfully passed Delhi Secondary School Examination conducted by Central Board of Secondary Education, New Delhi, and has been conferred a Diploma in Photography by All India Federation of Deaf Multiples Training Centre for deaf, New Delhi, after two years study course. The petitioner has averred that the defendant, as aforesaid, is running his own business in Kasumpti.

The applications were resisted by the plaintiff and were disposed of by the learned trial Court by a common order.

To say the least, the order is cryptic and is not a judicial determination of controversy raised before the trial Court. Both the applications have been dealt with in a very casual manner which approach is not commended. Judicial orders should be reasoned and self contained, based on sound legal principles and disclosing determination of the point raised or exercise of discretion on established legal principles.

The two applications moved, dealt with different aspects, namely, whether the plaint disclosed an enforceable cause of action and secondly whether defendant No.2, who is deaf and dumb, could represent his own case or not. How they came to be clubbed together and decided by a common order is surprising. The learned trial Court has exercised jurisdiction vested in it illegally. The order which has been passed is cryptic, casual and non-speaking. It displays a total lack of attention to the points raised for determination.

Both these revisions are allowed. The following directions are issued to the learned trial Court that:-

- (1) The objections taken by the defendant-petitioner that the suit is not maintainable under Order 7 Rule 11 of the Code of Civil Procedure will be decided in

the main suit after an issue has been framed by the trial Court.

(2) Notice of the suit will be sent to defendant No.2 and defendant No.1, Shri V.K. Sharma, will not be force to represent him. These directions are being issued as defendant No.2 is capable of understanding his own welfare. He is educated and has obtained a vocational diploma and is running his own business.

These revision petitions are accordingly disposed of with these directions. The parties are directed to appear before the learned trial Court on **14.12.2007**. Record of the proceedings, which have been received, be sent back to the trial Court forthwith.

CMP No.657 of 2007.

In view of the order passed in the revision petition, this application is disposed of. The interim stay granted on 29.08.2007 shall stand vacated.

November 30, 2007
(aks)

(Dev Darshan Sud)
Judge.

**IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA**

Civil Revision No.130 of 2007.

Date of decision:30.11.2007

Sh.V.K. Sharma

...Petitioner

Versus

Smt.Minakshi Sharma & Others

...Respondent

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?²

For the Petitioner: Mr.Suneet Goel, Advocate.

For the Respondents: Mr.J.R. Poswal, Advocate.

Dev Darshan Sud,J.

For judgment, see judgment of even date
passed in **Civil Revision No.129 of 2007, titled:**
Sh.V.K. Sharma vs. Smt.Minakshi Sharma & Another.

CMP No.658 of 2007.

In view of the order passed in the revision
petition, this application is disposed of. The interim
stay granted on 29.08.2007 shall stand vacated.

**November 30, 2007
(aks)**

**(Dev Darshan Sud)
Judge.**

² *Whether the reporters of Local Papers may be allowed to see the judgement?*