

Manpreet Singh @Shantu Vs Gurucharan Singh & Ors.

**Civil Miscellaneous (Main) No. 295 Of 2022, Civil Miscellaneous Application No.
16071 Of 2022**

Court: Delhi High Court**Date of Decision:** March 31, 2022**Acts Referred:**

Code Of Civil Procedure, 1908 " Section 151, 152

Hon'ble Judges: C. Hari Shankar, J**Bench:** Single Bench**Advocate:** Virendra Kumar Rawat**Final Decision:** Disposed Of

Judgement

C. Hari Shankar, J

1. The petitioner has filed an application before the learned Additional District Judge (ADJ) under Section 152 read with Section 151 of the Code of

Civil Procedure, 1908 (CPC), for correction of the name of the petitioner in judgment and decree dated 6th February, 2020.

2. The said application came up before the learned ADJ on 21st September, 2021, on which date the learned ADJ expressed doubts as to how the

correction, as prayed, could be granted under Sections 152 and 151 CPC.

3. In order for the petitioner to convince the learned ADJ on the aspect, the matter was re-notified on 21st October, 2021.

4. The order sheet dated 21st October, 2021 records that there was no appearance on behalf of the parties on the said date. Accordingly, the

application was dismissed and the file was directed to be consigned to record room.

5. The petitioner in this petition avers that the petitioner was represented by a "proxy Counsel", and that a request was made to the learned ADJ

for an accommodation, which was not acceded to.

6. There is no mention, in the impugned order, of any Counsel having appeared or of any such request having been made, though Mr. Virender Kumar

Rawat, learned Counsel for the petitioner, submits that the present petition is accompanied by an affidavit containing a verification regarding the proof

of its contents, it is not possible for this Court to accede such a statement, even if accompanied by an affidavit, in preference to the record of the court

below, which clearly states that there was no appearance on behalf of the petitioner.

7. The court is hesitant to believe that, even if the Counsel had appeared and sought an adjournment, which was refused, the learned ADJ would not

have so recorded in the order.

8. Without entering into the said controversy, as the petitioner's application was rejected on the ground of non-appearance, I deem it appropriate,

instead of keeping this petition pending, to dispose of the petition with a direction to the learned ADJ to allow the petitioner an opportunity to argue on

his application under Section 152 read with Section 151 CPC and satisfy the learned ADJ regarding the queries raised by him in the order dated 21st

September, 2021.

9. This shall, however, be subject to the petitioner paying costs of ₹ 5,000/- by way of a crossed Cheque/Demand Draft favouring the Delhi High

Court Legal Services Committee (DHCLSC) within a period of one week from today. On proof of payment of such costs, the petitioner may appear

before the learned ADJ on 11th April, 2022 at 10:30 a.m.

10. The learned ADJ would take up the matter on the said date and consider the petitioner's application on merits, as per his board and his

convenience.

11. It is reiterated that the matter would be heard only subject to the petitioner furnishing proof of payment of costs as directed hereinabove.

12. This Court has not, therefore, entered any observation regarding the legitimacy or merits of the petitioner's requests or whether they could be

granted by the learned ADJ. The issue shall remain open to be decided by the learned ADJ in accordance with law.

13. This petition stands disposed of in the aforesaid terms, with no orders as to costs.

14. A copy of this order be given dasti to learned Counsel for the petitioner.