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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-4413-2019

Date of Decision: July 31, 2023

Sanjiv Deepak Rahis @ Sanjiv Deepak Rais

...Petitioner

Versus

Rishab Rai Rahis and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Deepak Girotra, Advocate,
for the petitioner.

Mr. Sandeep K. Sharma, Advocate,
for respondent No. 1.

SANJAY VASHISTH, J.

1. Petitioner/Defendant No. 1 – Sanjiv Deepak Rahis @ Sanjiv Deepak Rais, has filed the present revision petition, under Article 227 of the Constitution of India read with Section 115 of the CPC, for setting aside impugned order dated 15.05.2019 (Annexure P-6), passed by the Court of learned Civil Judge (Junior Division), Rohtak, whereby application under Order XI Rules 1 and 2 CPC, filed by him, was dismissed.

For convenience, parties to the *lis*, hereafter shall be referred to as their original position in the suit.

2. Brief facts of the case are that plaintiff (Rishab Rai Rahis), who is residing in United States of America, instituted a Civil Suit No. 658 of 2010/2015, through his Special Power of Attorney, namely, Gulshan Rai

Narang, against the defendants, namely, (1) Sanjiv Deepak Rahis and (2) Sudha Popli. By way of said suit, plaintiff has sought relief of declaration alongwith permanent injunction on the ground that he is son of Sunil Kumar Rahis and grandson of Ram Parkash Rahis, while defendant No. 1 is son and defendant No. 2 is daughter of said Ram Parkash Rahis. Father and grandfather of the plaintiff expired on 08.09.1994 and 22.05.2003, respectively, leaving behind certain properties, as detailed in para Nos. 3 and 4(a) & (b) of the plaint. Plaintiff claimed that he is entitled to his share in the suit land, which is the family properties of the parties to the suit. He is entitled to his share in the properties left by his father as well as grandparents.

3. Defendants contested the suit. In the written statement filed by defendant No. 1, he raised specific preliminary objection No. 4 regarding concealment and intentionally suppressing of true facts that mother of the plaintiff, namely, Smt. Urmila, at the time of divorce with Sunil Kumar Rahis (father of the plaintiff), had received Rs.3,00,000/- in lump-sum towards dowry articles and permanent maintenance etc. Further, an amount of Rs. 1,50,000/- was deposited for plaintiff (who was then minor), towards share in all properties. Said amount deposited qua the share of plaintiff in the shape of FDR was subsequently got encashed after he attained maturity. Thus, defendant No. 1 opposed the claim of the plaintiff of having any right in the properties/assets left behind by his father (Sunil Kumar Rahis) and grandfather (Ram Parkash). Contents of preliminary objection No. 4 of the written statement filed by defendant No. 1, reads as under:-

“4. That the plaintiff has concealed and intentionally suppressed the true facts. The agreement of compromise was executed on 6.7.1993 by Smt. Urmila mother of plaintiff with her husband Sunil Kumar at the time of divorce which was duly signed by mother of plaintiff and also Gulshan Rai Narang his maternal uncle and who has now filed this suit as Power of attorney of plaintiff. The mother of plaintiff had received Rs. 3,00,000/- in lump sum towards dowry articles, and permanent maintenance etc. and it was further agreed that a sum of Rs.1,50,000/- was deposited for Plaintiff (then minor son of Urmila) towards share in all the properties. But the plaintiff and his power of attorney Sh. Gulshan Rai Narang, have not disclosed this fact in the plaint as required under the provisions of CPC. So the suit is liable to be dismissed on this ground.”

4. After leading and closing of plaintiff’s evidence, six witnesses were also examined by the defendants. At that stage, on 13.03.2015 (Annexure P-3), an application under Order XI Rules 1 and 2 CPC, was instituted by defendant No. 1, for putting the interrogatories for its answer to the plaintiff. To cut short, defendant No. 1 wants that alleged two queries/interrogatories be responded by the plaintiff. Two interrogatories, as proposed in the said application (Annexure P-3), are reproduced hereunder:-

- “a. Is it not a fact that the mother of the plaintiff Smt. Urmil received the amount of Rs.1,50,000/- from Sunil Kumar her husband and father of plaintiff toward share in the property in 1993 and simultaneously deposited the above amount in FDR No. 321856/04/93 dated 10.09.1993 with Oriental Bank of Commerce Branch Bhiwani Stand Rohtak and was payable on maturity on attaining the Majority of plaintiff as per compromise.*
- b. Is it not a fact that the above FDR was got encashed from the bank on maturity on attaining the majority by plaintiff and got credit to his SB account no. 0032201006340. The copy of account statement/pass book be got purchased.”*

5. In reply to the said application, filed on behalf of the plaintiff on 18.09.2015 (Annexure P-5), a specific stand has been taken in paragraph Nos. 2 and 3 of the reply on merits, saying as under:-

- “2. *Para no. 2 of the application is wrong and denied. The defendant has asserted wrong facts in para no. 4 of the preliminary objections of written statement. It is emphatically wrong and denied that a compromise was effected between the mother of plaintiff and father of plaintiff. It is wrong and denied that the mother of plaintiff had received Rs. 3,00,000/- in lump sum towards her dowry articles and permanent alimony and Rs. 1,50,000/- towards the share of plaintiff in all the properties. It is again specifically wrong and denied that an amount of Rs. 1,50,000/- was got deposited in FDR No. 321856/04/93 dated 10.9.1993 with OBC Bhiwani stand Rohtak, muchless to be matured on attaining the majority of plaintiff.*
3. *Para no. 3 of the application is wrong so denied. It is wrong and denied that after attaining majority the plaintiff get the alleged FDR withdrawn and credited to his SB account no. 0032201006340.”*

6. While deciding the application under Order XI Rules 1 and 2 CPC, filed by defendant No. 1, learned Trial Court has found that at the time of recording of statement of plaintiff's witness, namely, Gulshan Rai Narang, specific questions in regard to the now proposed interrogatories, were asked in his cross-examination by defendant No. 1, and the said witness has denied some facts qua compromise as well as payment. Even at the time of leading of defendant's evidence, concerned bank officials were examined by them to prove the FDR. Earlier also, one similar application was instituted by defendant No. 1 for admission and denial of the facts. In that application also, relief claimed by defendant No. 1 was similar to the claim sought by way of

present application. The said application was also dismissed by the Trial Court vide order dated 06.12.2013. Upon examining the nature of the interrogatories sought to be raised, learned Trial Court found that same are in the nature of cross-examination and as such cannot be permitted. Thus, vide impugned order dated 15.05.2019 (Annexure P-6), application filed by defendant No. 1, under Order XI Rules 1 and 2 CPC was dismissed. Hence, present revision petition.

7. Mr. Deepak Girotra, learned counsel for the petitioner/defendant No. 1 has argued that at the time of putting the same questions to the witness of the plaintiff, evasive reply was given, thus, the questions remained unanswered. Learned counsel, thus, submits that answers to the interrogatories, if given by the plaintiff in person, dispute in the present suit can be sorted out.

Learned counsel further argues that stage of trial is immaterial for filing of interrogatories as the same can be raised/filed as per mandate of the provisions contained under Order XI Rules 1 and 2 CPC during pendency of the suit by any of the affected party. He, thus, submits that if the impugned order is sustained, the petitioner/defendant No. 1 would be deprived of a vital right available to him under the Code. In support of his submission, learned counsel has placed reliance upon a judgment of Nagpur Bench of Bombay High Court, rendered in the case of Shrivallabh v. Ibrahimkhan, 2014 (71) R.C.R. (Civil) 381.

8. Per contra, Mr. Sandeep K. Sharma, learned counsel for the plaintiff/respondent No. 1 submits that learned Trial Court has passed a

reasoned order, which is liable to be sustained. Learned counsel submits that defendant No. 1 has failed to give any plausible explanation for not raising interrogatories at the initial stage of trial. As a matter of fact, present application under Order XI Rules 1 and 2 CPC, filed by defendant No. 1 is nothing but a novel method to cover up the lacuna, inasmuch as, defendants failed to prove the defence taken by them. Thus, the learned Trial Court has rightly dismissed the application. In support of his submissions, learned counsel has placed reliance on judgments of this Court in the case of Satya Devi v. Kanta Rani, 1999 (1) R.C.R. (Civil) 710, and Bhupinder Kumar and another v. Ajay Pal Goyal and another, 2011 (14) R.C.R. (Civil) 360.

9. I have heard learned counsel for the parties and with their able assistance gone through the record available before me.

10. In the present case, it has come on record that plaintiff has already led his entire evidence and thereafter even six witnesses were also examined by the defendants. In his cross-examination, plaintiff's witness, namely, Gulshan Rai Narang, has denied some facts qua compromise as well as payment, which was taken as a defence by the defendants. Even, the bank officials produced by the defendants in their defence, failed to bring the bank record, to prove the alleged FDR. Faced with this situation, defendant No. 1 filed application under Order XI Rules 1 and 2 CPC raising two interrogatories. Moreover, in reply to the application, plaintiff has specifically denied the contents of the averments made in para Nos. 2 and 3 of the application.

11. After noticing the principles of law enumerated in the judgment of

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Hon'ble the Apex Court in the case of Raj Narain v. Smt. Indira Nehru Gandhi, AIR 1972 SC 1302, and by various High Courts in the cases of Rajasthan Golden Transport Co. (Pvt.) Ltd. v. Avon Footwear Industries Pvt. Ltd., AIR 1986 Delhi 286, Nishi Prem v. Javed Akhtar and others, AIR 1988 Bombay 222, and Janaki Ballav Patnail v. Bennett Coleman and Co. Ltd. And others, AIR 1989 Orissa 216, in para No. 5 of the judgment in the case of Satya Devi (supra), this Court has observed as under:-

“5. In the facts of the present case, it has been pointed out that the entire evidence of the parties has been led. The suit was listed for evidence of the plaintiff in rebuttal. It was at that stage that the interrogatories were served. Once the evidence has been led, as noticed above, and there is very little to be recorded in evidence, then serving of interrogatories will not serve any purpose. Fishy interrogatories will not be proper. The very purpose of interrogatories at this stage is frustrated. Therefore, the learned trial Court was patently in error in allowing the application without recording reasons. The order must be taken to have been passed without jurisdiction.

Accordingly, the revision petition is allowed and the application under Order 11 Rule 1 of the Code filed by respondent No. 1-plaintiff is dismissed.

Petition allowed.”

In the present case, the view taken by the learned Trial Court while dismissing the application is in consonance with the view already taken by this Court in the case of Satya Devi (supra) and the impugned order is liable to be sustained.

12. Similar was the position in the case of Bhupinder Kumar (supra), wherein plaintiff's evidence stood concluded and the case was fixed for defendants' evidence. At that stage, alleged interrogatories were furnished by

the defendants. No explanation was furnished, why interrogatories could not be filed at the initial stage of trial and what was the necessity to seek reply by way of interrogatories when the evidence of the plaintiffs was already concluded. In the said case also, Trial Court declined the prayer by dismissing the application and matter reached to this Court in revision petition and while dismissing the same, in para No. 6 of the judgment, it has been held as under:-

“6. According to the aforesaid Rule, the plaintiff or the defendant with the leave of the Court is entitled to deliver interrogatories in writing for the examination of the opposite party or any one or more of such parties which are essential for the just decision of the suit. However, in the present case, issues were framed on 1.4.2010 and evidence of the plaintiffs had already been concluded. It was at the stage when the case was fixed for the evidence of the defendants that the alleged interrogatories were furnished by the defendant-petitioners. Though interrogatories can be sought at any time but the same has to be bona fide and without any delay. In this case, counsel for the petitioners was unable to explain why interrogatories could not be furnished at the initial stage itself and what was the necessity to seek reply by interrogatories when the evidence of the plaintiffs had already been concluded.”

13. Having considered the arguments of learned counsel for the parties and going through the aforementioned judgments, I am of the considered opinion that there is no illegality, perversity or discrepancy in the impugned order dated 15.05.2019 (Annexure P-6), passed by the learned Trial Court while dismissing the application under Order XI Rules 1 and 2, warranting any interference by this Court. The proposed interrogatories are held to be nothing else but in the nature of cross-examination and would impact the evidence already led by the parties. The cross-examination by respective witnesses would be looked into for the assessment of evidence at the

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final stage of trial by the Court. It is, thus, held that the purpose of Order XI Rules 1 and 2 CPC is not aimed at to fill up the lacuna at a belated stage.

14. As a sequel to the above discussion, I find no merit in the present revision petition, and the same is accordingly dismissed.

(SANJAY VASHISTH)
JUDGE

July 31, 2023
Pkapoor

Whether Speaking/Reasoned: ✓YES/~~NO~~
Whether Reportable: ✓YES/~~NO~~