

HIGH COURT OF UTTARAKHAND
AT NAINITAL

Civil Revision No. 188 of 2023

Sachin Phul

... Revisionist

Vs.

Neelam Maini

...Respondent

Advocate: Mr. Siddhartha Sah, Advocate, holding brief of Mr. Pankaj Kaushik, Advocate, for the revisionist.

Hon'ble Sharad Kumar Sharma, J.

The revisionist herein is a defendant in a civil suit, being Suit No. 19 of 2017, Smt. Neelam Maini Vs. Sachin Phul, as it was instituted before the Court of Senior Civil Judge, Kotdwar, District Pauri.

2. The suit thus instituted, the plaintiff has claimed for a grant of relief for specific performance of an agreement for sale in relation to the property, which was described in para 1 of the plaint. During the pendency of the Suit, and after the exchange of the pleadings, the learned Trial Court had framed the following issues:-

“i) Whether agreement to sell dated 15.09.2016 was executed between the parties?

ii) Whether the defendant has not complied with the conditions of the agreement to sell dated 15.09.2016?

iii) Whether the plaintiff has not properly valued the suit?

iv) Whether the court fees paid by the plaintiff is insufficient?

v) Whether the suit is barred by the provisions of Limitation Act?

vi) Whether the plaintiff is entitled to get the relief claimed?"

3. In the suit in question, the present revisionist had earlier filed an application, invoking the provisions contained under Order 7 Rule 11 of CPC, from the view point that there was no cause of action for the plaintiff to institute the suit for specific performance. The said application under Order 7 Rule 11 of CPC, as it was filed in the aforesaid, suit stood rejected; consequently, the matter had travelled before this Court at the behest of the present revisionist, in the earlier Civil Revision No. 44 of 2022, Sachin Phul Vs. Neelam Maini, which was preferred along with other connected civil revisions.

4. When the revision was considered by the coordinate Bench of this Court and adjudicated by the judgment dated 15.06.2023, the coordinate Bench of this Court has passed the order from the perspective, that all the revisions were disposed of together with a direction to the lower Court to rehear the final argument of the parties on the basis of the evidence as adduced by them upto that stage, and the Court was required to decide the question of maintainability and the aspect of cause of action. Relevant para 10 of the judgment dated 15.06.2023 is extracted hereunder:-

"10. At this stage, learned counsel for the revisionist/defendant would submit that all the four revisions may be disposed of together with common order with direction to the lower court to rehear the final arguments of the parties on the basis of evidence already adduced before it including the issue that whether there was any cause of action to file the suits, if not, whether suits are maintainable in absence of cause of action.

Learned counsel for the respondents/plaintiffs has no objection to this.”

5. The expression extracted from para 10, by the present revisionist as if it was to invoke provisions contained under Order 14 Rule 5 of CPC, for getting an issue framed, may not be a latitude or intention as interpreted by the revisionist's counsel for the reason being, that a rationale meaning has to be given to the observations made in para 10, where the coordinate Bench of this Court has observed, that the suit was to be reheard at final arguments on the basis of evidence already on record that means from that stage itself, and it further said before the issues including the issue pertaining to the maintainability and the absence of cause of action to be decided together while deciding issue Nos. 2 and 6.

6. On a holistic interpretation of this paragraph, it would be conclusively dealing with the aspect pertaining to the cause of action and maintainability too which was self included in issue Nos. 2 & 6. Para 10 in itself didn't gave any latitude to either of the parties to the suit to get any other issue framed at the belated stage, because rehearing an appreciation of evidence was limited to the evidence already on record was confined to the issue already framed. The only dissection, which was made by the coordinate Bench of this Court was that the issue of maintainability in the context of cause of action was to be heard by the learned trial Court.

7. The observations of para 10 cannot be read in isolation for the reason being that the direction as issued in para 10,

to revive the proceedings of the suit was at the stage of hearing, to read the evidences already on record, to enable the parties to argue on the issues already framed, it was self circumscribed and it cannot be permitted to be elaborated by the revisionist by filing an application invoking the provisions contained under Order 14 Rule 5 of CPC, for getting an additional issue framed and that is why in para 11 of the judgment, the coordinate Bench of this Court has observed that the Trial Court will give its finding while disposing of issue Nos. 2 & 6 which included the decision on the impact of application under Order 14 Rule 5 CPC.

8. An exception has been attempted to be carved out by the learned counsel for the revisionist as if the issue as proposed to be framed by invoking Order 14 Rule 5, was not inclusive in the issues already framed on record. This argument, as extended by the learned counsel for the revisionist may not be acceptable for the reason being that the issue No. 6, which was directed to be decided, was pertaining to the entitlement to grant of a relief claimed would be inclusive of interpretation to be given with regard to the cause of action, as directed to be decided, which was a subject matter by way of an earlier adjudication made by the revisionist on an application preferred under Order 7 Rule 11 of CPC.

9. Cause of action is a self contained provision under Order 7 Rule 11 of CPC itself, hence, the revisional judgment dated 15.06.2023 did not grant a latitude to the revisionist to file any independent application and particularly at the stage when the suit has reached to a

matured stage, as directed by the coordinate Bench of this Court and that too when the said aspect was already self exclusive on the issues already on record directed to be decided.

10. The learned counsel for the revisionist has referred to the provisions contained under Order 14 Rule 5 of CPC and has attempted to interpret, that the law in itself doesn't create any bar for getting an issue amended and to strike out issues. Order 14 Rule 5 of CPC reads as under:-

“5. Power to amend and strike out, issues - (1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.”

11. Logically, this Court is of the view, that Order 14 Rule 5 of CPC, is not a provision available to the revisionist for getting an additional issue framed, than what it existed prior to filing of an application under Order 14 Rule 5, the reason being that the head note of the provisions under Order 14 Rule 5 of CPC, cannot be read as to be synonyms to Order 14 Rule 4 of CPC. The power of framing of an additional issue apart from the issue already on record could be exercised under Order 14 Rule 4 of CPC only. Order 14 Rule 5 of CPC is only confined to amend or strike out an issue which obviously will relate to the issues which had

already been framed by the Trial Court, based on the rival pleadings.

12. Apart from it, the amendment or striking of an issue since as already observed cannot be read in parlance to framing of a new issue, the provision under Order 14 Rule 5 of CPC, in itself leaves it absolutely a prerogative with the Trial Court and that is why it has used the word “may”. “Amend or frame additional issues”, on such term and conditions “as it thinks fit”.

13. The word “may” which is not mandatory and is discretionary in nature, it has been left exclusively at the prerogative of the Trial Court to amend or frame an additional issue as may be necessary for the purposes of effectively determining the matter. The word “shall” used in the concluding part of sub Rule(1) of Rule 5 of Order 14, should not be misunderstood to override the effect of the word “may”, as used in the first part of Rule 5 of Order 14.

14. The judgment of the coordinate Bench of this Court, as rendered on 15.06.2023, when it was dealing with the subject about rejection of an application under Order 7 Rule 11 of CPC, it will be inclusive of an issue or all the issues covered by issue No. 6 and for that, no independent issue was required to be framed because of the limitations imposed by the coordinate Bench of this Court, that since the suit, being at a ripe stage, was to be decided, based on the available evidence by rehearing on the subject under Order 7 Rule 11 only.

15. Thus, the impugned judgment under challenge doesn't suffer from any apparent error which calls for an interference while exercising my revisional powers under Section 115 of the Code of Civil Procedure. Hence, the Revision lacks merit and the same is, dismissed.

(Sharad Kumar Sharma, J.)

20.12.2023

Mahinder/