

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Civil Revision No.1314 of 2015 (O&M)

Date of decision: 08.09.2015

Harish Goyal

.....Petitioner

versus

Puneet Jain and another

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Harsh Aggarwal, Advocate for the petitioner
Mr.Aman Bahri, Advocate for respondent No.1

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

Impugned in the present revision is the order dated 9.12.2014, passed by the learned Civil Judge, Senior Division, SAS Nagar, Mohali, vide which application filed by the petitioner (defendant No.2 before the lower Court) for rejection of plaint under Order 7 Rule 11 CPC qua him was dismissed.

I have heard learned counsel for the parties and have also carefully gone through the file.

Perusal of the file shows that the plaintiff (respondent No.1 herein) filed a suit for recovery of Rs.94,40,000/- against defendant Nos.1 and 2. As per averments made in the plaint, plaintiff

was told by defendant No.1 that defendant No.2 has entered into an agreement to sell dated 2.10.2010 with him and on that basis, defendant No.1 agreed to sell the said plot measuring 300 sq.yards in Aero City to the plaintiff. Plaintiff handed over a total sum of Rs.47,20,000/- to defendant No.1. However, defendant No.1 failed to supply the necessary documents and the suit for recovery has been filed.

The perusal of the plaint shows that according to the plaintiff total amount of Rs.47,20,000/- was paid to defendant No.1 on the representation of defendant No.1 that he is holding an agreement to sell in his favour. In the plaint, it is nowhere alleged that the money was also paid to defendant No.2 as well. Therefore, if on account of some wrong representation, plaintiff has paid some money to defendant No.1, he is entitled to recover the same from defendant No.1 only and if defendant No.1 has a further separate claim against defendant No.2, it is always open to him to file a separate suit to recover damages from defendant No.2. However, the controversy between defendant Nos.1 and 2 is separate. Here, the plaintiff is seeking refund of money paid to defendant No.1. Therefore, defendant No.2 at present is not necessary party. It being so, name of defendant No.2 is deleted from the arrays of defendants.

Learned counsel for the petitioner has informed that he has already filed an application for amendment of plaint alleging that money was paid to both the defendants. Let the said application be decided on its own merits without being influenced by this order.

The question of again impleading defendant No.2 as party

on the basis of fresh amendment, if allowed, is also left open.

Revision is accordingly allowed.

08.09.2015
gk

(Kuldip Singh)
Judge