

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.1478 of 2014
Date of decision: 17.09.2015

Rohtash

... Petitioner

Versus

M/s Hindustan Rollings and Wires Ltd. Delhi

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Amit Kumar Goyal, Advocate
for the petitioner.
Mr. Birender Singh Rana, Senior Advocate with
Mr. Rajinder Paul, Advocate for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not? YES
3. Whether the judgment should be reported in the digest?

ARUN PALLI J. (Oral)

Vide order being assailed, dated 23.08.2013, rendered by Civil Judge (Sr. Divn.), Sonapat, the application moved by the petitioner-plaintiff for restoration of the suit, that had been dismissed as withdrawn on 30.09.2006, has since been dismissed.

In an application moved by the petitioner-plaintiff, it is maintained that he had filed a suit for specific performance of the agreement to sell dated 22.06.2001. Since, the petitioner happened to be an agriculturist by profession, he had taken some land on oral lease w.e.f. 15.02.2006 to 01.08.2008, for agricultural purposes in village Jhalki, District

Mahasamund (Chhatisgarh) from one Surender son of Jai Bhagwan (lessor). He had given the requisite fee to his counsel for filing the suit. After an assurance given by his counsel that he would be informed as and when his presence would be required, he went to his village (Jhalki). His counsel never apprised him of affixation of court fee and never even contacted the petitioner for withdrawal of the suit either. Though, petitioner remained regularly in contact with his counsel, who falsely informed the dates that were purportedly being fixed in the matter. Petitioner arrived from village Jhalki on 30.10.2008, and only then, his counsel apprised him that his suit had been dismissed. Thus, his counsel played fraud upon him in collusion with the defendant, as suit was withdrawn on 30.09.2006, without his consent.

In response, the averments set out in the application were denied. It was maintained that there was no collusion between the counsel for the plaintiff and the defendant. And the suit was in fact withdrawn with the knowledge and consent of the petitioner. And thus, the application was liable to be dismissed.

On a consideration of the matter in issue and the material on record, the trial court declined the prayer made by the petitioner and concluded as thus:

“8. A perusal of main file reveals that applicant/plaintiff had filed a suit for specific

performance against the respondent/defendant on 24.12.2005. Issues were framed on 04.05.2006. Thereafter the case was fixed for plaintiff's evidence. Two opportunities were granted to plaintiff for evidence. However, no evidence was led on behalf of plaintiff. On 27.09.2006 when case was fixed for plaintiff's evidence, an application for giving directions to the plaintiff to pay full requisite court fee was moved on behalf of defendant and case was adjourned for 30.09.2006 for filing of reply. However, on the said date, reply was not filed. Rather learned counsel for plaintiff withdrew the suit on behalf of plaintiff by making a statement in the court and accordingly, suit was dismissed as withdrawn vide order dated 30.09.2006. Present application was filed by applicant on 24.11.2008. It has been alleged by the applicant/plaintiff that after giving required court fee for filing the suit he went to village Jhalkhi (Chhatisgarh) as he had taken some land on oral lease in that village from one Surender son of Jai Bhagwan. His counsel had given him assurance that he will call him as and when his presence would be required. However, his counsel never contacted him. Whenever, he contacted his counsel, he told him false dates about the case. However, applicant has failed to mention the specific dates which were allegedly told by his counsel wrongly. Even no action was ever initiated by the applicant against his counsel for withdrawal of the case without his permission. No complaint was ever made by present applicant to the Bar Council in this regard. Applicant has placed on record photocopy of a certificate issued by office of Gram Panchayat, Jhalki. This document

substantiates the claim of applicant that he had taken some land on lease at village Jhalki from one Surender son of Jai Bhagwan. However, this document does not prove that applicant was away to village Jhalki during the period when the case was pending in the court. Further the present suit was for specific performance of an agreement to sell for which advalorem court fee was required to be affixed. However, plaintiff/applicant filed the suit without affixing the proper court fee and when the objection in this regard was raised by defendant by way of filing the application, suit was got dismissed as withdrawn. It appears to this court that suit was got dismissed as withdrawn by the applicant to avoid affixation of court fee. Had the suit got dismissed as withdrawn by counsel without permission of the applicant/plaintiff, he would have certainly initiated proceedings against his counsel by way of filing complaint before appropriate authorities.”

I have heard learned counsel for the parties and perused the paper book.

Learned counsel for the petitioner simply seeks to reiterate the submissions that were advanced before the trial court and rejected after a due and comprehensive consideration. All what he urged is that the photocopy of the certificate issued by the Gram Panchayat, Jhalki, shows that the petitioner had indeed taken on lease some land and, therefore, he was not physically present at Sonapat to pursue the matter.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the petition in hand is wholly devoid of merit and is thus liable to be dismissed for the reasons that are being recorded hereinafter.

Concededly, petitioner had filed a suit for possession by way of specific performance of the agreement to sell on 24.12.2005. After the issues were framed on 04.05.2006, the matter was listed for recording of plaintiff's evidence. He even exhausted two opportunities but yet led no evidence. Of course, he knew that the kind of relief he had prayed for, ad valorem court fee was required to be affixed. Yet, the suit was filed without affixation of appropriate court fee. It was only when the respondent moved an application that the petitioner-plaintiff be directed to affix the appropriate court fee, and the matter was listed for reply to the said application for 30.09.2006, counsel for the petitioner made a statement and withdrew the suit. The order recorded in this regard, reads as thus:

“Today the case was fixed for filing reply to the application for giving the direction to the plaintiff to pay the full requisite court fee stamp. Reply not filed. However, counsel for the plaintiff has withdrawn the present suit. His statement recorded, separately. Heard. In view of the statement, the present suit stands dismissed as withdrawn. File be consigned to the record room.”

Ex facie, the suit was got dismissed as withdrawn only when the petitioner was confronted with a situation, where to pursue his suit, he was required to affix ad valorem court fee and the only alternative to avoid that situation, was to withdraw the suit. That being so, the presumption, that permeates the record, is that the suit was indeed withdrawn with the concurrence and consent of the petitioner. No cogent or credible material was brought on record to rebut the said presumption. So much so, application for restoration of the suit was moved on 24.11.2008, after over two years of the dismissal of the suit. The allegation that a fraud was played upon the petitioner by his counsel remained unsubstantiated on record for lack of cogent evidence. Concededly, petitioner contacted his counsel on 01.11.2008 and he was apprised of the fate of the suit. Yet, he never initiated any action against his counsel. No complaint was ever made against the counsel even to the Bar Council. This shows that the version set out by the petitioner in his application lacks credibility and is apparently false.

Even if, he had taken some land on lease at village Jhalki (Chhatisgarh) that would not mean that he never came to Sonapat ever in these two years to pursue his suit. Nothing was brought on record to show that he ever solicited information as regards the status of his suit from his counsel either.

In the wake of the position, as set out above, no interference is warranted, in exercise of revisional jurisdiction under Article 227 of the Constitution of India. Petition being devoid of merit is accordingly dismissed.

September 17, 2015
Rajan

(Arun Palli)
Judge