

**IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH**

**CR No. 2094 of 2015**  
**Date of decision : August 25, 2015**

**M/s Maharashtra Savings Thapar House**

**..... Petitioner**

**Versus**

**M/s Breeze Builders and Developers Pvt.Ltd. and others**

**..... Respondents**

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present:- Mr. Surjit Singh Malhotra, Advocate  
for the petitioner.

Mr. Puneet Bali, Senior Advocate with  
Ms. Monika Thakur, Advocate  
for respondent No.1.

Mr. Aman Pal, Advocate  
for respondent Nos. 2 to 8.

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1. Whether reporters of local papers 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?

**Amit Rawal, J (oral).**

The challenge in the present petition is to the impugned order dated 24.2.2015 (Annexure P-9) whereby an application filed by the petitioner-plaintiff seeking two fold relief ; one for striking out issue framed by the court on 28.8.2014 and second written statement filed by defendant No.8/respondent No.1 be taken

off the record have been dismissed.

Learned counsel for the petitioner-plaintiff submits that the suit for specific performance of the agreement to sell dated 15.1.2007 was filed in the year 2007. The trial court on the basis of pleadings between the parties to the *lis* i.e. defendant Nos. 1 to 7 framed the issues on 23.7.2008. However, during the pendency of the suit the vendor sold the suit property to defendant No.8 vide sale deed dated 16.7.2012, which necessitated the petitioner-plaintiff, to move an application under Order 1 Rule 10 CPC for impleading defendant No.8 as respondent-defendant. The same was allowed. In pursuance to the order allowing the application, *ibid*, the written statement was filed on behalf of respondent No.8. He submits that defendant No.8 cannot be permitted to take a different stand to the one already taken by the vendor and issues recasted vide order dated 28.8.2014 could not have been framed in the manner, as defendant No.8 cannot be permitted to take the plea of bona fide purchaser.

In support of his contentions, learned counsel for the petitioner relied on the judgment of Hon'ble Supreme Court in **Thomson Press (India) Ltd. Vs. Nanak Builders and Investors Private Limited and others (2013) 5 SCC 397 para 39.**

Mr. Puneet Bali, learned Senior counsel assisted by Ms. Monika Thakur, Advocate appearing on behalf of respondent No.1 and Mr. Aman Pal, Advocate appearing on behalf of respondent Nos. 2 to 8, submits that the application at the instance of petitioner-plaintiff was (Annexure P-7) was nothing but a gross abuse of

process of court, in as much as, the plaintiff cannot be permitted to scuttle the right of the newly added defendant and prevent him from filing written statement/raising defence independent to that of the defendant Nos. 1 to 7. In support of their relied on the following judgments in Vidur Impex and Traders Private Limited and others Vs. Tosh Apartments Private Limited and others (2012) 8 SCC 384, Sumtibai and others Vs. Paras Finance Co.(2007) 10 SCC 82, M. P. State Agro Industries Development Corpn.Ltd.and another Vs. Jahan Khan (2007) 10 SCC 88, Amit Kumar Shaw and another Vs. Farida Khatoon and another (2005) 11 SCC 403, Vidyawati Vs. Man Mohan and others (1995) 5 SCC 431, Balbir Singh Vs. Baldev Singh and others 2014 (4) PLR 752, Jagmohan Chauhan Vs. Sunder Lal Sharma and others 2014 (4) PLR 781 and Kamlesh Sharma @ Kamlesh Kumari and another Vs. Satya Devi and others (2013)SCC Online Del 2755.

They further submits that the impugned order does not suffer from illegality, much less perversity and cannot be said to have been passed without jurisdiction, thus, prays that the revision petition be dismissed with costs.

I have heard learned counsel for the parties and appraised the paper book with their able assistance.

Shorn of the facts noticed above, and as well as contentions and rival contentions of the parties to the /is, the foremost question to be determined by this Court is as to whether the application Annexure P-7 at the instance of the petitioner-plaintiff for

striking out the written statement and as well as disputing the recasting of the issues was maintainable or not. It would be apt to reproduce the issues framed on 23.7.2008 and recasted issues vide order dated 28.8.2014.

*“Present: Sh. Sudesh Kumar, Adv.for plaintiff.*

*Sh. M. K. Dang, Adv.for defendant.*

*Replication filed. Copy given. From the pleading of the parties, following issues are framed:-*

- 1. Whether defendant entered into agreement to sell dated 15.1.2007 in respect of the suit property as alleged?OPP*
- 2. Whether the plaintiff has been ready and willing to perform its part of contract as alleged?OPP*
- 3. If issue no.1 and 2 are proved, whether the plaintiff is entitled to specific performance of the contract and injunction as prayed for?OPP*
- 4. Whether the plaintiff has no locus-standi and cause of action to file the present suit?OPD*
- 5. Whether the suit is not maintainable in the present form?OPD*
- 6. Whether the suit is not properly valued for the purposes of court fee and jurisdiction?OPD*
- 7. Whether the plaintiff has not come to the court with clean hands?OPD*
- 8. Relief.*

*No other issue is pressed or claimed.*

*Onus not objected to. Now to come up on 12.12.08 for evidence of the plaintiff. PF.DM,list of witnesses etc. be also filed within 15 days from today failing which the parties shall not be entitled to assistance of the court for summoning of the witnesses and witnesses shall be produced by the parties at their own responsibility. Long*

*date due to heavy pendency.”*

Issues framed vide order dated 28.8.2014:

*“Present: Sh. O.P.Lohiya, counsel for the applicant*

*Sh. J. K. Dang, counsel for defendants no.1 to 7.*

*Sh. R. P. Aggarwal, counsel for defendant no.8.*

*Replication to the written statement filed by defendant no.8 filed. Copy given. An application for placing on the file original fixed deposit receipt (FDR) amounting to Rs.1,19,48,491/- also filed. Heard. From the pleadings of the parties, the following issues are hereby framed as under:-*

- 1. Whether the plaintiff is entitled to decree of specific performance of the written agreement dated 15.1.2007 directing the defendants to execute and get registered the sale deed of the land in question measuring 30 Kanal 5 Marla, fully detailed in para no.1 of the plaint and in the written agreement dated 15.1.2007 as well as permanent injunction as prayed for on the grounds mentioned in the plaint?OPP*
- 2. Whether there was any occasion to tear/destroy the alleged original agreement dated 15.1.2007 as claimed by the plaintiff?OPP*
- 3. Whether if specific performance is not allowed, plaintiff is entitled to refund of earnest money?OPP*
- 4. Whether the suit of the plaintiff is not maintainable in the present form?OPD*
- 5. Whether the plaintiff has no cause of action and locus standi to file the present suit?OPD*
- 6. Whether the suit of the plaintiff has not been properly valued for the purposes of court fee and jurisdiction?OPD*
- 7. Relief.*

*Onus not objected to. No other issue is*

*pressed or claimed. Now to come up on 18.9.2014 for plaintiffs' evidence in compliance of Order XVI Rule 1 CPC. Reply to the aforesaid application be also filed on the date fixed."*

There is no doubt to the ratio decidendi culled out by the Hon'ble Supreme Court in **Thomson Press (India) Ltd.'s case (supra)** but the controversy, which the Hon'ble Supreme Court had an occasion, to ponder upon an issue, was as to whether a subsequent purchaser would be necessary party or not and as to whether the principles of Section 52 of the Transfer of Property Act, 1882 would be applicable or not.

Considering the aforementioned principles the Hon'ble Supreme Court permitted the subsequent vendee to be added as respondent. However, in paragraph 45 liberty was granted to the newly added defendant therein to take up all such defences which are available to the vendor as the said defendant had derived title from the vendor on purchase of the suit property, subsequent to the agreement, entered into with previous vendee during the pendency of the suit.

Learned Senior counsel appearing on behalf of respondent No.1-defendant No.8 submits that the liberty given by the trial court to file written statement and the same has been filed in accordance with that order.

It is a matter of record that respondent No.1-defendant No.8 was impleaded at the instance of the plaintiff-petitioner and while allowing the said application, the trial court had

permitted defendant No.8 to file written statement and the said order has not been challenged, much less, assailed.

There is another aspect of the matter, that till date the petitioner-plaintiff has examined only two witnesses whereas the suit was instituted in the year 2007. It appears that the petitioner-plaintiff is not interested in pursuing with the suit as on one occasion the same was withdrawn on 2.9.2011, but thereafter an application dated 1.2.2012 was filed for restoration of the suit which was allowed on 12.2.2013. Accordingly the suit was restored back to its original number.

On the other hand, the judgment cited on behalf of the respondent No.1-defendant No.8 are applicable to the facts and circumstances of the case. The Hon'ble Supreme Court while pondering upon the question as to whether the subsequent vendee during the pendency of the suit for specific performance can be permitted to be impleaded and file his separate/independent written statement or not.

The aforementioned ratio decidendi culled out by the Hon'ble Supreme Court in **Sumtibai and others's case (supra)** leaves no doubt in the mind of the Court that newly impleaded defendant No.8 cannot be prevented from filing its independent defence. The order declining the application of the plaintiff-petitioner cannot be said to be without jurisdiction. The civil revision is devoid of merits. The application, in my view, is gross abuse of the process of Court and therefore, I intend to impose costs of ₹25,000/- to be paid equally to the counsel for the respondents-defendants in the trial

court.

Before parting with the order, I intend to issue directions to the trial court for expeditious disposal of the suit by limiting opportunities to the parties to the *lis*.

The revision petition is accordingly dismissed.

**(AMIT RAWAL)**  
**JUDGE**

**August 25 , 2015**  
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