

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of Decision: November 30, 2015

1. Civil Revision No.5041 of 2015

Narinder Kumar

...Petitioner

Versus

Harjit Singh

...Respondent

2. Civil Revision No.5063 of 2014

Narinder Kumar

...Petitioner

Versus

Harjit Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

Present: Mr.T.P.S.Tung, Advocate,
for the petitioner in both the cases.

Mr.Samuel Gill, Advocate,
for the respondent in both the cases.

AMIT RAWAL, J. (Oral)

By this order, I intend to dispose of two Civil Revision Petition Nos.5041 of 2015 and 5063 of 2014 as the common questions of law and facts involved in both the petitions are the same.

Civil Revision No.5063 of 2014 has been filed against the order dated 23.5.2014, whereby the defence of the petitioner-defendant has been struck off, whereas Civil Revision No.5041 of 2015 has been filed against the order dated 8.7.2015, whereby the application filed by the respondent-

plaintiff seeking leave of the court for producing the original agreement to sell dated 7.7.2010 and as well as his affidavit has been allowed.

Mr.T.P.S.Tung, learned counsel appearing on behalf of the petitioner-defendant submits that the impugned order dated 23.5.2014 closing the defence is not in accordance with the provisions of Order 8 Rule 1 CPC for the reason that the defence has been struck off within a period of 30 days of the decision dated 23.4.2014. In this regard, he has drawn the attention of this Court to the zimni orders (Annexures P-1, P-2 and P-3).

The same read thus:-

“Annexure P-1

Sh.R.S.Bajwa Adv. filed power of attorney on behalf of defendant along with application under order 11 rule 14 of C.P.C. Copy supplied. Reply be filed on 26.2.14.

Annexure P-2

Reply not filed. Date requested. Same be filed on 26.03.14 being last opportunity. No further opportunity thereafter shall be granted.

Annexure P-3

Reply to application under Order 11 rule 14 of C.P.C. has not been filed by the plaintiff. Plaintiff is directed to place on record the documents which has been sought by defendant in his application. Hence the application Under Order 11 rule 4 CPC stands disposed of. Now to come upon 23.04.2014 for producing the document by plaintiff.”

As regards the impugned order dated 8.7.2015 challenged in

Civil Revision No.5041 of 2015, it has been submitted that it tantamounts to

review of the order dated 23.4.2014, whereby similar application filed by the petitioner-defendant for production of the original agreement to sell, *ibid*, and affidavit has been disposed of vide order dated 26.3.2014 and in the event of challenge or setting-aside of the aforementioned order, the impugned order tantamounts to review of the order, which is not permissible under law.

Mr.Samuel Gill, learned counsel appearing on behalf of the respondent-plaintiff submits that the order dated 26.3.2014 cannot be read against the plaintiff for the reason that he is the master of his own case and his claim for specific performance of the agreement to sell in the absence of original agreement to sell shall be affected. He further submits that in the order dated 23.4.2014 (Annexure P-4 in CR No.5063 of 2014), the Court has observed that in case the documents produced subsequently, adverse inference should be drawn. In support of his contention, he has drawn the attention of this Court to the order dated 23.4.2014 (Annexure P-4), which reads thus:-

“Today, the case was fixed for producing the document in accordance with the application Under Order 11 rule 14 C.P.C., but the documents have not been produced by the plaintiff. As the documents have not been produced by the plaintiff, he will not be allowed to produce the documents in future and if these are produced, then adverse inference will be drawn against him. Written statement be filed on 23.05.2014.”

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

Vis-a-vis the striking of the defence of the defendant in filing the written statement, I am of the view that the provisions of Order 8 Rule 1 CPC are not mandatory but directory in nature. Accordingly, the impugned order striking of the defence is set-aside. Petitioner-defendant is granted a

week's time from the date of receipt of certified copy of this order to file the written statement.

Civil Revision No.5063 of 2014 stands allowed.

Vide impugned order dated 8.7.2015, the Court was oblivious of the condition imposed in the order dated 23.4.2014. I am of the view that there is no illegality and perversity in the order allowing the application moved on behalf of the respondent-plaintiff for production of the original agreement to sell and affidavit, but the same will be subject to the condition imposed in the order dated 23.4.2014. Accordingly, the impugned order is modified. It is made clear that the production of the original agreement to sell dated 7.7.2010 and affidavit dated 7.7.2011, shall be subject to the condition imposed in the order dated 23.4.2014. With the aforementioned modification, rest of the order is upheld.

In view of the above, Civil Revision No.5041 of 2015 stands disposed of.

November 30, 2015
ramesh

(AMIT RAWAL)
JUDGE