

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

Civil Revision No.5145 of 2013 (O&M)

Date of decision: 23.07.2015

Divyanshu Aggarwal

... Petitioner

versus

Amrit Chopra

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Aditya Jain, Advocate,
for the petitioner.

Mr. Sudhanshu Makkar, Advocate,
for the respondent.

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

K.Kannan, J. (Oral)

1. The petitioner is before this court who is the defendant in suit that resists an action for damages claimed by means of a mandatory relief. The right of the plaintiff in suit is sourced to a document dated 01.02.2007 that contained an agreement to sell a certain number of shares in a public limited company. The petitioner, who is defendant in the suit, had earlier filed a suit before the court at Delhi seeking for recovery of the amounts paid as earnest under the same document dated 01.02.2007 setting out

certain circumstances as to how the agreement for the purchase could not be enforced and claiming recoveries. The suit appears to have been dismissed and an appeal has been filed which is pending before the High Court of Judicature at Delhi. The defendant, who has sought for an adjudication regarding the enforceability of the contract for sale of shares before the court at Delhi, has moved an application for stay of proceedings after the plaintiff filed his proof affidavit and before the commencement of the cross-examination of the plaintiff of the subsequently instituted suit. According to him, the decision in the earlier instituted suit will have an immediate bearing and the issue regarding the enforceability of the agreement dated 01.02.2007 before the High Court is also substantially and directly an issue in the subsequently suit filed. The plaintiff has sought for damages for non-fulfillment of the terms of the contract by the defendant and that the relief will require to be considered in the light of whether the agreement could be enforced or not.

2. The plaintiff objected to prayer for stay of the trial of the suit contending that it was filed at a belated stage and that also his own suit is for a different relief of claiming damages which was not an issue in the earlier suit. The plaintiff had not even filed a counterclaim or any set off in the Court at Delhi only because his own right to claim damages arises under an independent cause of action. The suit cannot, therefore, be stayed.

3. The consideration of Section 10 CPC shall be tested on issues which were for consideration in the earlier suit and to see whether there is directly and substantially in issue matters which are brought through the subsequently instituted suit. The subsequently instituted suit is for damages for non-fulfillment of the terms of the document dated 01.02.2007 and although his claim for damages is a distinct cause of action, the relief cannot be granted by the court in the subsequently instituted suit, unless the court finds whether the document dated 01.02.2007 was capable of being enforced and whether there was any breach on the part of either of the parties that would have a bearing on the grant of the reliefs. I have no doubt in my mind that the suit at the court at Delhi where the defendant figured as a plaintiff pleading for a justification to resile from his obligation of purchase the shares and when he was seeking for recovery of the earnest, will conclusively determine the issue of the enforceability of the agreement that will have an immediate bearing to the subsequently instituted suit. The counsel for the respondent-plaintiff states that there must be a congruity of issues in all aspects between the same parties or persons claiming under them and would state that there are several decisions to that effect. There could be no such law and if there exists one which is not stated before me, it does not accord to me legal sense. What is necessary to be seen is what the Section says. The consideration shall be on whether the

previously instituted suit has an issue that is directly and substantially to the issue in the subsequently instituted suit. Any cause of action for a suit may arise from a bundle of causes. The agreement may give rise to several rights and obligations, the enforcement of one right or subjecting a party to one obligation under an agreement may not extinguish all rights and obligations under the same agreement. If in an earlier suit, the agreement dealt with an issue of right of one of the contracting parties and the validity of the agreement and the enforceability was being considered, the court need not have considered yet another right or obligation arising from the same document which the defendant was entitled to seek for an adjudication in the same suit. If he chose not to pursue the remedy for enforcement of his own right and would come with a separate suit, such a suit cannot be a bar but such a suit will have to await the adjudication of an earlier suit.

4. The order passed cannot be sustained and it is set aside.

5. Before parting, I must observe that there was also an objection taken by the defendant that the suit was not properly valued. The suit is for recovery of damages but it has been couched in the form of a mandatory relief and a fixed court fee has been paid. The counsel for the respondent states that he will be willing to pay the ad valorem court fee for the amount which is claimed as damages. I record his statement and would require the court below

to secure an enforcement of the undertaking given by the counsel
before this court.

6. Civil revision is allowed with the above observations.

(K.KANNAN)
JUDGE

23.07.2015
sanjeev