

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

CR No.5584 of 2015

Date of decision : 11.12.2015

Parveen Kumar

...Petitioner

Versus

Vijaya Bank and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. Suveer Sheokand, Advocate for the petitioner.

Mr. Pradeep, Advocate for
Mr. Suresh Goyal, Advocate for respondent No.1.

AMIT RAWAL, J. (Oral)

The petitioner is aggrieved of the impugned order dated 03.08.2015, whereby application filed under Order 1 Rule 10 read with Section 151 of Code of Civil Procedure for impleadment of the applicant as defendant in the civil suit bearing No.18174 of 2012 titled as Vijaya Bank Vs. Surinder Chauhan and ors., has been declined.

Mr. Suveer Sheokand, learned counsel appearing on behalf of petitioner submits, that petitioner had entered into agreement to sell dated 08.04.2009 for purchase of property measuring 130 square yards comprised

in Khasra No.4//3 Khata No.1883-2098 situated at Haibowal Kalan, Hadbast No.102, Abadi Sant Nagar, Near Gandhi Colony, Tehsil & District Ludhiana for ₹9,30,000/- and at the time of execution of agreement to sell, sum of ₹60,000/- was paid to Suresh Chauhan and Surinder Chauhan defendant Nos.1 and 2 as security as the property was lying mortgaged with bank and in view of understanding, he kept on paying loan to the bank. In the aforementioned suit, the defendants have been proceeded ex parte & which has seriously prejudiced the interest of the petitioner in view of having entered into, an agreement to sell. It is in these circumstances, the application was moved, which has erroneously, been dismissed. He has further drawn attention of this Court to order dated 13.01.2014 passed by this Court in CWP No.242 of 2014, wherein this Hon'ble Court passed the following order:-

“Learned counsel for the petitioner submits that he has earlier been also depositing the amount on the loan account of the borrower in view of the fact that he has entered into an agreement to sell qua the house property which was mortgaged to the bank and is in occupation thereof. He submits that since this was one of the conditions of the agreement to sell to clear the liability of the bank and the bank has been accepting the payment earlier, there is no reason for the bank now to refuse payment. He further submits that he is not insisting on the release of the title document to him but that on the loan amount being cleared, the title document be released to the borrower from whom he can then recover the title document and seek specific performance of the agreement to sell in case the borrower does not co-operate.

In view of the aforesaid position, we see no

difficulty in the petitioner's approaching the bank with the request to keep depositing the amount as there is no impediment in the bank accepting that amount provided the petitioner is not insisting on the release of the title document in his favour which can only take place with the consent of the owner.

The petition accordingly stands disposed of."

Mr. Pradeep, Advocate for Mr. Suresh Goyal, learned counsel appearing on behalf of respondent No.1-Bank submits, that the respondent-plaintiff has not sought any relief, much less, recovery against the petitioner. The bank is dominus litus. The petitioner cannot be permitted to be impleaded as the suit can be decided in his absence. Thus there is no illegality and perversity in the order under challenge.

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

The law with regard to the impleadment in the suit under the provision of Order 1 Rule 10 CPC, has been recently deliberated upon by Hon'ble Supreme Court in *Thomson Press (India) Ltd. Vs. Nanak Builders & Investors P. Ltd. and ors.*, 2013(2) RCR (Civil) 875, wherein following principles have been culled out:-

"1. The Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the suit.

2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an

effective decree cannot be passed by the Court.

3. *A proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.*

4. *If a person is not found to be a proper or necessary party, the Court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.*

5. *In a suit for specific performance, the Court can order impleadment of a purchaser whose conduct is above board, and who files Application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.”*

It is a matter of record that agreement to sell aforementioned was entered into between the petitioner and defendants No.1 and 2. Since defendant Nos.1 and 2 after taking the sum of ₹60,000/- has no interest in the property. The absence of the defendants having been proceeded ex parte itself proves that they have no interest in the property. It is rather the petitioner who has a direct interest in protecting the property as he has been put into possession in pursuance to the agreement to sell. Even from the perusal of the order passed by this Court, direction had been issued to the petitioner to continue in payment of the loan installments. While discharging the loan liability of the defendants, Mr. Suveer, submits that petitioner is not defaulter as he is continuing in payment and is not asking for the release of the documents until and unless, entire loan is paid.

In my view, interest of the applicant would seriously be prejudiced in case petitioner is not permitted to be impleaded in the suit as

defendants.

Keeping in view the aforementioned facts and circumstances, impugned order is hereby set aside. Application for impleadment is allowed and petitioner is allowed to be impleaded in the suit as defendant No.4.

Civil Revision petition stands allowed.

11.12.2015

pawan

**(AMIT RAWAL)
JUDGE**