

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Civil Revision No.66 of 2011 (O&M)

Date of decision: 15.12.2015

Beant Kaur

.....Petitioner

versus

Mohindra Financiers and Lucky Scheme (P) Limited and another

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Gurcharan Dass, Advocate for the petitioner
None for the respondents

1. *Whether Reporters of Local Newspapers 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?*

Kuldip Singh, J. (Oral)

Respondents served through publication but not present.

Proceeded ex-parte.

Factual position as made out from the perusal of the various orders is that the learned Additional Civil Judge, Senior Division, Ludhiana passed a judgment and decree dated 2.4.1998. The plaintiff-appellant Beant Kaur preferred an appeal before the learned District Judge, Ludhiana, who vide order dated 23.4.1999 accepted the appeal and while noticing that findings on issue Nos.5 and 6 have not been recorded, held that decree is reversed and suit is remanded to lower Court Under 41 Rule 23-A CPC.

Thereafter, when the matter was taken up before the

learned Additional Civil Judge, Senior Division, Ludhiana, the counsel for the defendants suffered a statement that he does not press the issue Nos.5 and 6. Therefore, same were decided as not pressed and vide order dated 5.8.1999, the learned Additional Civil Judge, Senior Division, Ludhiana held that issue Nos.5 and 6 stand disposed of accordingly and file be consigned to record room.

Aggrieved by the said order, the plaintiff preferred an application for review praying that a decree should be drawn as the earlier judgment of the learned Additional Civil Judge, Senior Division was set aside. However, vide order dated 22.4.2010 learned Additional Civil Judge, Senior Division, Ludhiana dismissed the application, observing as under:-

“In view of my discussion made above, I am of the considered view that the order dated 5.8.99 cannot be reviewed as the said order has been passed on the basis of statement made by Ld. Counsel for the defendants. Moreover as per order dated 23.4.99, Mrs.Bakhshish Kaur, Ld. District Judge, Ludhiana has ordered to give findings only on issue No.5 and 6. In the appeal there was no order that the plaintiff is entitled for the relief of specific performance of the agreement in question. Otherwise also, even if the said order dated 5.8.99 is passed inadvertently, even then, it cannot be reviewed as our own Hon'ble High Court in so many authorities has held that no Magistrate has power to review/ recall its own order. Accordingly the application for reviewing order

dated 5.8.99 filed by petitioner Beant Kaur is dismissed and disposed off.”

Against the said order, the plaintiff preferred an appeal, which was dismissed by the learned District Judge, Ludhiana, vide order dated 1.11.2010, making the following observations:-

“The impugned order was rendered u/s 152 of the CPC. The appeal against the impugned order, which was rendered u/s 152 of the CPC is not maintainable, which could only be got revised through revision and not through instant appeal and, therefore, the same being not maintainable is, hereby, dismissed with no order as to costs with liberty to the appellant to approach the Hon'ble revisional court for redressal of his grievance. Appeal file be consigned to the record room, while the record of the learned trial Court be returned.”

I have heard learned counsel for the appellant and have also carefully gone through the file.

The respondent have not appeared despite service through publication.

It comes out that from the above noted orders and observations that one or the other Court is dealing with the matter in hyper technical manner. Once the judgment and decree of the lower Court was set aside by the learned District Judge, may be on any ground, including that findings on issue Nos.5 and 6 were not recorded, the lower Court after deciding issue Nos.5 and 6 was supposed to hear the arguments afresh and decide the same again

on merits by passing the judgment and thereafter the decree was to be drawn. The review application was wrongly dismissed by the lower Court. The learned District Judge taking that the review application is in fact an application under Section 152 of the CPC, dismissed the same vide order dated 1.11.2010.

In view of the matter, the order learned District Judge dated 1.11.2010 as well as the order of the learned Additional Civil Judge, Senior Division dated 22.4.2010 are set aside and the order dated 5.8.1999, passed by the learned Additional Civil Judge, Senior Division, Ludhiana is modified to the extent that after the decision on issue Nos.5 and 6, the lower Court is directed to hear the arguments afresh and pass fresh judgment and draw the decree accordingly.

Revision is accordingly allowed.

The petitioner is directed to put in appearance before the learned Additional Civil Judge, Senior Division, Ludhiana on 15.1.2016.

15.12.2015
gk

(Kuldip Singh)
Judge