

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 6432 of 2015
Date of decision : September 29, 2015

Lt.Col. (Retd) Ravi Kumar Sarwan and another

..... Petitioners

Versus

Ganesh Arora

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Ms. Ritu S Sharma, Advocate
for the petitioners.

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 order whereby the application filed under Order 1 Rule 10(2) CPC seeking impleadment of the defendants at appellate stage had been declined.

Learned counsel for the appellants submits that though the respondent-defendant qua mis-joinder of proper parties had taken an objection in the written statement but the same were not impleaded, which resulted into passing of the judgment and decree whereby the suit filed by the plaintiffs was decreed.

During the pendency of the appeal filed by the petitioners-defendants, an application aforesaid had been filed to implead Arora Timber International Pvt. Ltd.as defendant and Jaypee Capital as proforma defendant. The lower appellate court has committed illegality and perversity in dismissing the application as the appeal is in continuation of the suit, therefore the provisions of

Order 1 Rule 10 (2) CPC would apply.

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

The impleadment of the defendant as sought, in my view is to avoid a legal objection taken, way back when the written statement was filed, specifically preliminary objection with regard to mis-joinder of proper parties, despite that the suit continued, which resulted into passing of the judgment and decree. Realizing the fact that the appeal may not be allowed on this point, an application was moved to implead Arora Timber International Pvt. Ltd. as defendant and Jaypee Capital as proforma defendant. Such an exercise, in my view, would tantamount to de novo trial, which is not permissible.

The lower appellate court, while dismissing the application assigned cogent reasons, by observing that the applicants-petitioners were alive to the situation but woke up from the slumber as late as when the appeal by the respondent-defendant was filed. Keeping in view the aforesaid findings, I do not find any illegality and perversity in the impugned order and the same cannot be said to have been passed without jurisdiction and wish to interfere, while exercising jurisdiction under Article 227 of the Constitution of India.

The revision petition being devoid of merits. Accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

September 29 , 2015
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