

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

Civil Revision No.6464 of 2013
Date of Decision: September 10, 2015

Amarjit Kaur & another

...Petitioners

Versus

Suman Thakur & others

...Respondents

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.Mandeep Singh Bedi, Senior Advocate with
Ms.Manpreet Kaur, Advocate,
for the petitioners.

Mr.Sudeep Mahajan, Advocate,
for respondent Nos.1 to 10.

AMIT RAWAL, J. (Oral)

The challenge in the present revision petition is to the impugned order dated 19.9.2013 (Annexure P-5), whereby the application dated 28.2.2013 filed by the respondent-plaintiffs for striking out the written statement filed by petitioner-defendant Nos.4 and 5, assignees of defendant No.1 Om Piari, has been allowed and the written statement has been ordered to be kept off the record with a further rider that they would have no right to lead evidence.

Mr.Mandeep Singh Bedi, learned Senior Advocate assisted by
Ms.Manpreet Kaur Advocate, appearing on behalf of the petitioners submits

that on earlier point of time, the petitioners had moved an application under Order 1 Rule 10 CPC for impleadment. The same was, though, allowed by the trial Court, but the order was set-aside by this Court in Civil Revision No.5949 of 2006, decided on 29.2.2008. After the decision of the aforementioned revision, an application under Order 22 Rule 10 CPC was filed and the same has been allowed by the trial Court vide order dated 10.5.2008 (Annexure P-2). In pursuance to the said order, the petitioners filed the written statement and even cross-examined the witnesses of the plaintiffs. It is only in 2013, the application, aforementioned, has been filed by the plaintiffs, whereby the impugned order came to be passed. In support of his contention, he has relied upon the judgment of the Hon'ble Supreme Court in **Thomson Press (India) Ltd. Versus Nanak Builders & Investors P.Ltd. and others, 2013(2) R.C.R. (Civil) 875** to contend that once the order dated 10.5.2008 has not been challenged, whereby liberty had been granted to file the written statement, belated application filed in the year 2013 was not maintainable and, therefore, the impugned order suffers from illegality and perversity, much less, has been passed without jurisdiction.

Mr.Sudeep Mahajan, Advocate appearing on behalf of contesting respondent No.1-plaintiff, submits that the provisions of Order 1 Rule 10 CPC are entirely different. Order 1 Rule 10 CPC gives an independent right to the impleaded party to file a separate written statement, whereas under the provisions of Order 22 Rule 10 CPC, the subsequent vendee is an assignee and is permitted to take up only such defence which has already been taken by the assignors and since this Court had already set-

aside the order whereby the petitioners were impleaded as defendants under Order 1 Rule 10 CPC, they could not be permitted to file independent written statement, much less, even lead the evidence and, therefore, there is no illegality and perversity in the impugned order.

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

The operative part of the order dated 29.2.2008 passed by this Court reads thus:-

“In view of what has been stated herein above, the revision petition is allowed and the order, dated 31.7.2006 is set aside. However, respondents No.4 & 5 would be at liberty to file an application, in terms of Order 22 Rule 10 of the CPC, before the trial Court. In case such an application is filed, the same shall be considered and decided by the trial Court, in accordance with law, within a period of fifteen days of the filing thereof.”

In pursuance to the aforementioned order, an application under Order 22 Rule 10 CPC was filed and the same was allowed on 10.5.2008. The operative part of the order reads thus:-

“5. Suit in hand was filed on 18.05.06 when exparte status quo order was passed by the predecessor Court. As per record, defendant No.1 appeared on 07.06.06 executed the sale deed in favour of applicants on 22.05.06. It is not on record that defendant No.1 or purchasers were having knowledge of status quo order of the court. Issues are already framed in this suit. Except affidavit of Kamal Dev, no evidence is produced on record by plaintiff. Kamal Dev is also yet to be cross-examined. It is already observed by the Hon'ble High Court that Om Piari has already received the price and is not left

with any interest in the suit property. Therefore, nobody may be protecting the interest of the applicant whereas result of the suit may affect the rights of the applicants. It is further observed by the Hon'ble High Court that applicants are to step into the shoes of Om Piari and may be allowed to defend the suit under Order 22 Rule 10 CPC. As per law for grant of leave under Order 22 Rule 10 CPC, detailed enquiry is not be conducted and question of "assignment" can be considered at the stage of final hearing. Applicants relied upon 2005 (2) Civil Court Cases 423 Amit Kumar Saw & Anr. Vs. Farida Khatoon & Anr. That transferees pendente lite were made party during second appeal. Applicants further relied upon Vol.CIV-(1993-2) The Punjab Law Reporter 461 Bhupinder Singh and others Vs. Pritam Singh and others, that in interest of justice, interest of applicants is liable to be watched. If applicants are allowed to cross-examine plaintiffs witness & are allowed to produce evidence the same shall not cause any legal injury to plaintiff because genuineness of the will shall have to be proved by plaintiffs independently. Adjudication in question shall certainly affect the rights of the applicant and Om Piari may not be interested in contesting this suit as she has already received the price and is not left with any interest in the suit property. Therefore, especially when it is not established at this stage that Om Piari or applicants were having the knowledge of exparte status-quo order, applicants are allowed to defend the suit under Order 22 Rule 10 CPC by stepping into the shoes of Om Piari in the light of order dated 29.02.08 passed by the Hon'ble High Court. Pleadings/written statement be filed by applicants on the date already fixed i.e. 14.05.08."

In pursuance to the aforementioned order, the parties were given liberty to file pleadings/written statement on the date fixed, i.e.,

14.5.2008. The petitioners filed the written statement and cross-examined the witnesses of the plaintiffs. When the case reached the stage of leading evidence at the behest of defendant Nos.4 and 5, the application dated 28.2.2013 came to be filed, resulting into passing of the impugned order.

The trial Court, while passing the impugned order, did not notice the implication of the order dated 10.5.2008, whereby, defendant Nos.4 and 5 were permitted to file written statement. No objection was taken at the time when the written statement was filed.

It is a matter of record that the plaintiffs had not challenged the aforementioned order, which has attained finality. In my view, the application resulting into passing of the impugned order was not maintainable, for the simple reason that the order dated 10.5.2008 had attained finality. Even otherwise, as per the ratio decidendi culled out in **Thomson Press (India) Ltd.'s case (supra)**, the parties to be impleaded under Order 22 Rule 10 CPC have been given liberty to take up all such defences which are available to the vendor.

In view of the aforementioned dictum and as well as the operative part of the order dated 10.5.2008, petitioner-defendant Nos.4 and 5 were given liberty to file the written statement. The application filed in the year 2013 was, thus, not maintainable. The trial Court has committed an illegality and perversity in allowing the application by ordering the striking off the written statement and putting an embargo on the petitioners to lead evidence. It appears that the trial Court was oblivious of the order dated 10.5.2008.

The contention that the assignee would not have any right to

file independent written statement is not tenable in view of the fact that the trial Court had granted the permission to defendant Nos.4 and 5-petitioners to file the written statement.

In view of what has been observed above, the impugned order is hereby set-aside.

Revision petition is accordingly allowed.

September 10, 2015
ramesh

(AMIT RAWAL)
JUDGE