IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 7211 of 2013 (O&M)
Date of decision: 30.03.2015

Dinesh Saran

... Petitioner

versus

Pranav Shefali Trust and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Jasterj Singh, Advocate, for the petitioner.

Mr. Abhishek Sethi, Advocate, for respondent Nos. 1 to 4.

K.Kannan, J.

The revision is brought at the instance of the 3rd defendant on the plea that he had not been served with summons in suit. The summons had been received by one Rekha who is reported be not in any way connected or related to the 3rd defendant. The service was therefore, not valid. The petitioner-3rd defendant would therefore, file an application and would state that he came to know about the pendency of the suit against him when one Mahesh Kumar who was his tenant had given his evidence in suit when he was called and he reported to petitioner that there was a case instituted against the petitioner as well and he had given evidence in Court as witness. According to the petitioner, it was only then he came to know about the institution of the suit and he had engaged one Raj Kumar Sobti to look after the affairs of the petitioner, since he was living away in Delhi and secured information that one Brahm Parkash had got his power of attorney for the 3rd defendant and filed the written statement.

The court examined the issue of whether the statement could be permitted to be received from the petitioner, taking notice of the fact that suit had been instituted in the year 2004 and statements had been filed on behalf of the 3rd respondent through Brahm Parkash in October 2012 in his capacity as a power of attorney and the power of attorney was also filed and exhibited at the time of inquiry. The Court reasoned that Brahm Parkash was his sister's son and if the power of attorney was not true, he would have taken steps to lodge a complaint against his nephew. If it was not done, it should only be taken that the power of attorney was true.

I do not think there is a proper judicial approach made by the Courts below in assuming that if the petitioner had not taken action against Brahm Parkash, the power of attorney filed in Court must be taken as true. The Court could not have rejected a plea by the petitioner to receive his statement without satisfying itself that Brahm Parkash was the lawfully constituted power of attorney for the petitioner and if he was the lawful attorney, the statement filed by him could not have been substituted. Without a finding that the power of attorney is valid, the Court could not have rejected the petition to revive the statement. The crucial consideration, therefore, ought to have been to examine the validity of the power of attorney alleged to have been issued in favour of Brahm Parkash.

The trial Court will frame, therefore, a point for consideration for rendering a finding on the petition whether the power of attorney alleged to have been executed by the petitioner in favour of Brahm Parkash was true and valid. The onus is on the plaintiff who wants to contend that the power of attorney is valid and that the statement filed by him must be construed as the statement made by the 3rd defendant. The court may itself summon Brahm Prakash as Court witness and allow for cross-examination by both the petitioner and the plaintiffs. If the power of attorney is found to be true, the fact that statement is filed on behalf of the petitioner will be taken as rendering unnecessary a plea that the petitioner was not served with summons, for nothing prevents in law for a person from filing the written statement even though service was not effected.

If on the other hand, the power of attorney is not true, the petitioner will have the benefit of the written statement filed by him to be received and the Court will eschew the written statement already filed on behalf of the 3rd defendant by Brahm Parkash. If the Court also finds that the power of attorney is brought about by impersonation and Brahm Parkash had filed the written statement without valid authority, the Court may issue appropriate notices for forgery committed in Court documents and cast a criminal case to be registered for appropriate action against the person who had perpetrated the fraud and impersonation in the Court records.

With these observations, the order passed by the Courts below are set aside and the revision is ordered on the above terms.

(K.KANNAN)
JUDGE

30.03.2015
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