

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No. 1174 of 2014

Date of Decision:- 16.02.2016

Aggarwal Vidya Pracharni Sabha,

....Petitioner

Versus

Municipal Corporation, Faridabad and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporters or not? | |
| 3. Whether the judgment should be reported in the Digest? | Yes |

Present:- Mr. Anil Kumar Rana, Advocate,
for petitioner.

Mr. Shubham Kaushik, Advocate,
for respondent No.1.

SHEKHER DHAWAN, J.

Present revision petition under Article 227 of the Constitution of India for setting aside the order dated 24.01.2014 (Annexure P-5) whereby application filed by petitioner directing the defendants to either admit or deny the documents was dismissed.

2. Relevant facts of the case; that petitioner-society filed a suit for declaration to the effect that memos dated 22.06.2000, 08.06.2007, 09.05.2008 and 13.05.2008 issued by respondent-defendants are illegal, null and void, and for restraining the respondents-defendants from demolition of any portion of the college building of the petitioner as well as for refunding the amount of ₹25,65,671/- which was deposited by the petitioner under

protest.

3. Defendant contested the suit by filing written statement taking the plea that building plan application was filed in the office of defendant on 05.04.1999. Plaintiff had raised additional unauthorized construction in violation of rules. Thereafter, vide memo dated 27.04.1999 plaintiff was asked to remove the unauthorized construction. Reply submitted by the plaintiff was considered but the same was found to be unsatisfactory. Plaintiff had not removed the unauthorized possession. Thereafter case was adjourned to 27.11.2013 to admit or deny the documents. The matter was also adjourned to 13.12.2013, 03.01.2014 and 17.01.2014. Petitioner filed the application and the proceedings were adjourned for filing reply to the said application. Reply to the application was filed on 21.01.2014 taking the plea that application was not maintainable.

4. Learned counsel for petitioner submitted that Court below failed to appreciate the provisions of Order X of CPC that on the first date of hearing the Court shall ascertain from each of the party or his pleader whether they admit or deny such allegation of facts but that has not been done and the order passed by the Court below on such an application having been filed by the petitioner, is liable to be set aside.

5. Learned counsel for respondents took the plea that it is for the petitioner to prove its case by leading evidence and there was no question of admission and denial of documents by the respondents and the order passed by Court below on 24.01.2014 is legal and present petition deserves to be dismissed.

6. Having considered the submissions made by learned counsel for both the parties, this Court is of the considered view that the controversy

is short and simple that after completion of pleadings before the Court by way of filing of plaint and written statement, the Court was under legal obligation to call for the parties to admit or deny the documents. Under Order X (1) (2), it is obligatory for the Court to ask the party or his pleader to admit and deny such allegation or document, but that has not been done despite the application having been filed by the present petitioner. Relevant part of Order X is as under:

1. Ascertainment whether allegations in pleadings are admitted or denied. At the first hearing of the suit the Court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by the necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.
2. Oral examination of party, or companion of party.
 - (1) At the first hearing of the suit, the Court-
 - (a) shall, with a view to elucidating matters in controversy in the suit, examine orally such of the parties to the suit appearing in person or present in Court, as it deems fit; and
 - (b) may orally examine any person, able to answer any material question relating to the suit, by whom any party appearing in person or present in Court or his pleader is accompanied.
 - (2) At any subsequent hearing, the Court may orally examine any party appearing in person or present in Court, or any person, able to answer any material question relating to the suit, by whom such party or his pleader is accompanied.
 - (3) The Court may, if it thinks fit, put in the course of an examination under this rule questions suggested by either party.

7. In view of the above, present petition is accepted and order dated 24.01.2014 (Annexure P-5) is set aside with a direction to the Court below to proceed further on the basis of pleadings of the parties as per provisions of Order X (1)(2) CPC.

February 16, 2016
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(SHEKHER DHAWAN)
JUDGE