

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

CR No.2148 of 2016(O&M)

Date of decision:21.3.2016

Nexus Sourcing Solutions Pvt. Ltd.

....Petitioner

VERSUS

Nawal Singh (deceased) through his LRS and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Vikas Jain, Advocate for the petitioner.

REKHA MITTAL, J. (Oral)

The present petition lays challenge to order dated 20.01.2016 passed by the Civil Judge (Junior Division), Gurgaon, dismissing application of the petitioner for framing of additional issues.

The petitioner- Nexus Sourcing Solutions Pvt. Ltd. filed a suit for permanent and mandatory injunction directing the respondents to execute the agreement on the basis of a receipt dated 02.08.2007. After about two years of filing the suit on 30.10.2009, the petitioner on 06.03.2010 filed an application for amendment of the plaint to convert the suit of injunction into one for specific performance on the basis of receipt dated 02.08.2007. The application for amendment was allowed by the trial Court vide order dated 14.12.2012 that became subject matter of challenge before this Court in Civil Revision No.961 of 2013 titled Nawal Singh and

others vs. Nexus Sourcing Solutions Private Limited and others. The petition came to be disposed of by this Court vide order dated 11.02.2013 and a relevant extract from the order reads as follows:-

“Having heard the rival contentions and without going into the illegality of the order, this court deems it appropriate that the trial court on completion of the pleadings would decide the following two preliminary issues :-

1. Whether the suit for specific performance was maintainable on the basis of the receipt dated 2.8.2007?
2. Whether the suit, on amendment, is within limitation?

Disposed of accordingly and the trial court would decide the aforesaid preliminary issues as expeditiously as possible.”

Counsel for the petitioner would contend that the respondents filed an application on 20.09.2015 for framing of additional issues for decision of the case on merits. The application was later withdrawn by the respondents on 13.10.2015. It is argued with vehemence that once the respondents themselves filed an application for framing of additional issues, it can be safely construed that they have waived their right, if any, accrued under the order passed by this Court.

Another submission made by counsel is that the petitioner filed another suit titled Nexus Sourcing Solutions Pvt. Ltd vs. Daya Ram and others, in which similar application for amendment of the plaint to convert the suit for injunction into that of specific performance on the basis of receipt dated 02.08.2007 was allowed and the said order was also challenged before this Court in Civil Revision No.952 of 2013, decided on 11.02.2013 by which the trial Court was directed to frame similar two preliminary issues. In the said suit, plea of the petitioner for framing of

additional issues qua their entitlement to seek specific performance on the basis of receipt dated 02.08.2007 etc. were framed and the suit has been decided by recording findings on all the issues including preliminary issues vide judgment and decree dated 30.09.2015. It is further argued that as the trial Court, in the other suit, has allowed framing of all the issues and determination thereof, there was no reason for the trial Court to dismiss the instant application particularly in the circumstances that the respondents themselves filed an application for additional issues, at one point of time.

I have heard counsel for the petitioner and perused the records.

Counsel for the petitioner, on a query raised by the Court, has fairly informed that the order passed by the Court disposing of Civil Revision No.961 of 2013 was never challenged by the petitioner and the same has attained finality. An order passed by this Court cannot be varied by the parties by way of waiver, acquiescence or consent. An act on the part of trial Court in violating directions of this Court would prima facie indicate insubordination and indiscipline, may be contemptuous as well. The mere fact that in the other proceedings, the Court in clear violation of the order dated 11.02.2013 framed all the issues and decided those issues, would not entitle the petitioner to seek indulgence at the cost of putting a seal on an illegality committed by the trial Court in other proceedings.

In this view of the matter, I do not find any error in negating plea of the petitioner for framing of additional issues for decision of the case on merits prior to deciding the preliminary issues framed by this Court vide order dated 11.02.2013.

For the reasons aforesaid, finding no merit, the petition is dismissed in *limine*.

A copy of the order be placed before Hon'ble the Acting Chief Justice for appropriate action.

MARCH 21, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE