

Civil Revision No.3653 of 2016

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.3653 of 2016

Date of Decision:27.5.2016

Jai Parkash

---Petitioner

vs.

M/s Active Promoters Private Limited and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Shailendra Jain, Senior Advocate
with Mr. Sanjeev Gupta, Advocate
for the petitioner

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

Rekha Mittal, J.

Challenge in the present petition has been laid to the order dated 9.5.2016 (Annexure P-4) passed by the Additional Civil Judge (Senior

Division), Gurgaon, dismissing application (Annexure P-1) filed by the petitioner/defendant No. 4 for permission to file written statement/defence on such pleas which were available to defendant No. 3 (Shanti Devi).

M/s Active Promoters Private Limited and others filed a suit for specific performance of agreement to sell dated 13.12.2005 in respect of land measuring 42 kanals 01 marla situated in the revenue estate of village Dhankot, Tehsil and District Gurgaon. It was alleged that Virender Singh and Yusuf Khan entered into the aforesaid agreement to sell and suit for specific performance was filed on 14.6.2006. During pendency of the suit, they (Virender Singh and Yusuf Khan) sold the suit land vide sale deed bearing Vasika No. 6787 dated 23.6.2006 to Smt. Shanti Devi (defendant No. 3). Later, Smt. Shanti Devi further sold the suit land in favour of Sh. Jai Parkash (petitioner herein) vide sale deed No. 1610 dated 13.4.2007 for a sale consideration of Rs.3,75,93,750/- and mutation No. 4367 was sanctioned in respect of the said sale. Sh. Jai Parkash filed an application for being impleaded as a party in the suit for specific performance but the same was dismissed by the Additional Civil Judge (Senior Division), Gurgaon vide order dated 15.11.2013 that became subject matter of

challenge in Civil Revision No. 7338 of 2013 filed before this Court. The said petition was disposed of vide order dated 5.1.2016 (Annexure P-3) whereby the petitioner was allowed to be impleaded as a defendant but subject to a condition. The operative part of the order dated 5.1.2016 passed by this Court is extracted hereinunder for facility of reference:-

Keeping in view ratio of the judgment in **Thomson Press (India) Limited vs. Nanak Builders & Investors Private Limited and others 2013(2) RCR(Civil) 875**, the order passed by the trial court rejecting claim of the petitioner to be impleaded as a party by invoking the provisions of Order 22 Rule 10 CPC cannot be allowed to sustain. As a result, the petition is allowed. The petitioner is allowed to be impleaded as respondent No. 5 but subject to the condition that the petitioner as a result of his addition shall be entitled to raise and pursue only such defences as were available and taken by the original defendants and none other.”

The petitioner filed an application for permitting him to file the

written statement/defence on such pleas which were available to Smt. Shanti Devi. After filing of reply to the said application by the respondent/plaintiff and having heard counsel for the parties in the light of order passed by this Court particularly the operative part reproduced hereinbefore, the trial court dismissed the application in view of its observations, reads thus:-

“.....a perusal of the order (dated 5.1.2016 passed by this Court) clearly reveals that the defendant was allowed to be impleaded as a party with the condition that he would raise and pursue only such defences which were available and taken by the original defendants. Now this reference of 'original defendants' cannot be construed for Shanti Devi as she was on the same footing as the present applicant. Original defendants here means the defendant Nos. 1 and 2 who had sold land during pendency of the suit to Shanti Devi who further sold it to the present applicant. In other words, the present applicant is deriving his right through Shanti Devi only and even if

Shanti Devi (proceeded against ex parte) would have contested the suit, even then in that case, she could not have taken any plea different from defendant Nos. 1 and 2. It would be relevant to mention here that the present case was at this stage on rebuttal evidence and arguments and at this stage, the applicant cannot be allowed to file any separate written statement and lead evidence because it would re-open the entire case. This was not the intention of the Hon'ble High Court while allowing him to be impleaded as a party in the suit.”

Counsel for the petitioner has submitted that in case the petitioner is not permitted to file his written statement independently and raise all those defences which were available to Smt. Shanti Devi or for that matter to Sh. Virender Singh and Yusuf Khan which were not actually raised by defendant Nos. 1 and 2, no useful purpose would be served by allowing prayer of the petitioner for being impleaded as a party to the suit more particularly in the circumstances that the petitioner would be the only person affected by decision, if any, rendered in favour of the

respondent/plaintiff. It is further argued that the petitioner cannot be left to sit at the fence for all the times to come as has been held by the trial court. It is argued with vehemence that since the petitioner has been allowed to be a party in the lis, may be, a transferee pendente lite, he has the right to file the written statement and lead evidence. In support of his contention, he has referred to judgment of Hon'ble the Supreme Court of India **Amit Kumar Shaw and another vs. Farida Khatoon and another 2005(2) RCR(Civil) 651** referred to in the judgment **Thomson Press (India) Limited's case (supra)**. Further reference has been made to judgments of this Court **M/s Maharashtra Savings Thapar House vs. M/s Breeze Builders and Developers Private Limited and others Civil Revision No. 2094 of 2015** decided on 25.8.2015, **Ashok Kumar and another vs. Ved Pal and others Civil Revision No. 4990 of 2014** decided on 8.12.2015, **Sushil Kumar Goenka and another vs. Dharam Pal and another Civil Revision No. 7119 of 2014** decided on 26.4.2016.

I have heard counsel for the petitioner, perused the paper book and the judgments cited at Bar.

In **Amit Kumar Shaw and another's case (supra)** referred to

in the judgment in **Thomson Press (India) Limited's case (supra)**.

Hon'ble the Apex Court in para 16 has held, reads thus:-

“The doctrine of lis pendens applies only where the lis is pending before a Court. Further pending the suit, the transferee is not entitled as of right to be made a party to the suit, though the Court has a discretion to make him a party. But the transferee pendente lite can be added as a proper party if his interest in the subject matter of the suit is substantial and not just peripheral. A transferee pendente lite to the extent he has acquired interest from the defendant is vitally interested in the litigation, whether the transfer is of the entire interest of the defendant; the latter having no more interest in the property may not properly defend the suit. He may collude with the plaintiff. Hence, though the plaintiff is under no obligation to make a lis pendens transferee a party; under Order XXII Rule 10 an alienee pendente lite may be joined as party. As already noticed, the Court has

discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests. The Court has held that a transferee pendente lite of an interest in immovable property is a representative-in-interest of the party from whom he has acquired that interest. He is entitled to be impleaded in the suit or other proceedings where the transferee pendente lite is made a party to the litigation; he is entitled to be heard in the matter on the merits of the case.”

Again in para 17, it has been held that appellants who are transferees pendente lite should be made as parties to the pending second appeals as prayed for by them. In our opinion, the High court has committed serious error in not allowing the applications for substitution filed by the appellants. The Hon'ble Apex Court in **Amit Kumar Shaw and another's case (supra)** did not deal with right of transferee pendente lite to file the written statement and adduce evidence in support thereto. The Court has held that the transferee pendente lite is entitled to be heard in the matter on

merits of the case and thus, should be made party to the pending second appeals before the High Court.

On the contrary, Hon'ble the Supreme Court in **Thomson Press (India) Limited's case (supra)** has scanned in detail the rights of a transferee pendente lite and after taking into consideration the judgment in **Amit Kumar Shaw and another's case (supra)** and **Rikhu Dev, Chela Bawa Harjug Dass vs. Som Dass (deceased) through his Chela Shiama Dass (1976) 1 SCC 103** summed up in para 56 and 57 that the appellant shall as a result of his addition raise and pursue only such defenses as were available and taken by the original defendants and none other.

In the case at hand, the application filed by the petitioner (transferee pendente lite) for being impleaded as a party in the suit filed by the respondent was allowed by this Court exactly in consonance with the principle laid down by the Apex Court that the petitioner as a result of his addition shall raise and pursue only such defences as were available and taken by the original defendants and none other. It is an undisputed position of the case that order passed by this Court allowing the petitioner to be impleaded as a party on the array of defendants has not been reversed or

modified. In the circumstances of the present case, the petitioner cannot be heard to say that he is entitled to file his written statement in an independent capacity and raise the defenses which were not raised by Smt. Shanti Devi or by the original defendants. Keeping in view the fact that the petitioner was permitted to be impleaded as a party subject to the stipulation laid down in the order dated 5.1.2016 passed by this Court, the petitioner cannot derive any advantage to his contention from the cases decided by this Court and relied upon by him which were decided in view of their peculiar facts and circumstances. In view of the above, I do not find any error much less illegality in the impugned order warranting intervention.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

27.5.2016
paramjit