

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.4946 of 2015

Date of Decision:31.3.2016

Parkash Ram

---Petitioner

vs.

Amrik Singh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Rajinder Goyal, Advocate
for the petitioner

Mr. Rakesh Gupta, Advocate
for the respondent

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.

The defendant is in revision to express his grievance against order dated 7.7.2015 (Annexure P-10) passed by the Civil Judge (Junior Division), Guhla, dismissing his application (Annexure P-9) for amendment of the written statement.

Counsel for the petitioner would contend that the respondent/plaintiff has claimed specific performance of an agreement to sell dated 3.9.2010. The petitioner has admitted the agreement to sell but averred that the said agreement was cancelled on 23.11.2011 by way of a writing. In the written statement dated 31.10.2012, it was alleged that an

amount of Rs. 6,26,000/- was refunded to the respondent and agreement stands cancelled. Later, an application was filed for amendment of the written statement to allege that besides refund of Rs. 6,26,000/-, another amount of Rs. 1,50,000/- was also paid to the respondent and a writing in this regard was scribed by the plaintiff. The application for amendment was allowed by the trial court and in pursuance thereof, the petitioner filed an amended written statement. It is further argued that by way of the present application, the petitioner sought to clarify that the writing dated 23.11.2011 is not in the handwriting of the plaintiff but the same is in handwriting of a relative of the plaintiff. It is vehemently argued that no prejudice would be caused to the respondent if the proposed amendment is allowed when otherwise law regarding amendment of written statement is to be construed more liberally viz-a-viz amendment of a plaint. Another submission made by counsel is that the petitioner was arrested in a case registered under the Narcotic Drugs and Psychotropic Substances Act and as soon as he came out of the jail, the instant application has been filed in order to clarify the status of writing dated 23.11.2011.

Counsel for the respondent, on the other hand, has supported the impugned order with the submissions that the learned trial court, on a detailed consideration of the matter has dismissed the application which is nothing but a clever attempt on the part of the petitioner to withdraw from his earlier statement that the writing dated 23.11.2011 was scribed by the plaintiff because the plaintiff filed an application for taking his specimen handwriting to be compared with the writing dated 23.11.2011 that was allowed by the learned trial court. It is further submitted that as the

amendment sought is clearly mala fide when otherwise the same is beyond the scope of proviso appended to Rule 17 of Order 6 of the Code of Civil Procedure (in short "CPC"), contentions raised by the petitioner are highly misplaced and devoid of merit.

I have heard counsel for the parties, perused the records but find no merit in the petition.

The petitioner raised a categorical plea that the agreement in question was cancelled vide writing dated 23.11.2011 which was scribed by the plaintiff himself. He earlier sought amendment of the written statement that was allowed by the trial court. The present application was filed after the respondent moved an application for taking his specimen handwriting to get it compared with the writing dated 23.11.2011 from an expert. There is no satisfactory much less justifiable explanation tendered by the petitioner to amend the written statement by withdrawing from his earlier stand in the written statement. Counsel for the petitioner is not in a position to cross the embargo created by proviso appended to Rule 17 of Order 6 CPC. In view of the above, I do not find any error much less illegality in the order impugned as would warrant intervention in exercise of supervisory jurisdiction by this Court.

Dismissed.

(Rekha Mittal)
Judge

31.3.2016
paramjit