

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.5097 of 2013 (O&M)
Date of decision:03.02.2016

Krishan Kumar

... Petitioner

Vs.

Sumitri Devi and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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. Vivek Lamba, Advocate
for the petitioner.

Mr. B.K.Bagri, Advocate
for respondent No.1.

AMIT RAWAL J. (Oral)

The petitioner-plaintiff is aggrieved of the order dated 23.07.2013, whereby, an application filed by respondent No.1 under Order 22 Rule 10 read with Section 151 Code of Civil Procedure being subsequent transferee, has been allowed.

Mr. Vivek Lamba, learned counsel for the petitioner-plaintiff submits that previous to the passing of the impugned order on the application filed under Order 22 Rule 10 of the Code of Civil Procedure, respondent No.1 filed identical application for impleading defendant in the main suit, which was dismissed in default. Application for restoration was also dismissed. He further submits

that there is no provision to seek restoration of the misc.application. However, liberty was granted to file fresh application. He further submits that the provisions of Order 9 Rule 7 of the Code of Civil Procedure have been interpreted by this Court, wherein it has been held that miscellaneous application, in case of dismissed in default, seeking restoration can be filed. The respondent instead of challenging the order, moved the fresh application, which has erroneously been allowed.

Mr. B.K.Bagri, learned counsel for respondent No.1 submits that in view of the liberty granted by the trial Court, application was filed. As per the ratio decidendi culled out by the Hon'ble Supreme Court in **Thomson Press (India) Ltd. vs. Nanak Builders & Investors P. Ltd. and others 2013(2) RCR (Civl) 875**, the application aforementioned, has been allowed and respondent being subsequent transferee has been allowed to contest the suit. As vendor/defendant No.1 has been proceeded ex parte, valuable right has been affected, in case, the application is dismissed.

I have heard learned counsel for the parties and appraised the paper book.

Vis-a-vis findings rendered by the trial Court in the order dated 22.10.2012, I am of the view that such findings are totally alien to the settled proposition of law as the application seeking restoration is permissible. Since the liberty was granted to the respondent to file the fresh application which has been allowed, I am

of the further view that principles culled out by the Hon'ble Supreme Court in Thomson Press's case (supra) are squarely applicable to the present case. For the sake of brevity, principles are reproduced herein below:-

“1. The Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as Plaintiff or Defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the suit.

2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the Court.

3. A proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

4. If a person is not found to be a proper or necessary party, the Court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.

5. In a suit for specific performance, the Court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction

or a transaction made by the owner of the suit property in violation of the restraint order passed by the Court or the application is unduly delayed then the Court will be fully justified in declining the prayer for impleadment. ”

There is another aspect of the matter. Since the vendor has already proceeded ex parte, right and interest of respondent No.1 has seriously been affected, therefore, the trial Court has rightly allowed the application.

I am in agreement with the impugned order and the same cannot be said to have been passed without jurisdiction. There is no merit in the revision petition.

Accordingly, the revision petition is dismissed.

(AMIT RAWAL)
JUDGE

February 03, 2016
savita