

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

CR No.5125 of 2014(O&M)

Date of decision:29.9.2016

Narinder Singh Walia

....Petitioners

VERSUS

Sehbaz Bhatti

.....Respondent

CORAM: **HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Jagdish Manchanda, Advocate for the petitioners.

Mr. Aalok Jagga, Advocate for the respondent.

REKHA MITTAL, J.

By invoking Article 227 of the Constitution of India, the present petition directs challenge against order dated 23.07.2014 (Annexure P-3) passed by the Civil Judge (Junior Division), Kharar, whereby application of the petitioner for restoration of the suit has been dismissed.

A brief backdrop of the case is that the petitioner filed a suit for specific performance of agreement to sell dated 22.11.2004 in respect of land measuring 17 kanals on the basis whereof an amount of Rs.13,60,000/- was paid as earnest money in the presence of witnesses. The suit was filed in August 2005 and the same was withdrawn in January, 2007.

The instant application (Annexure P-1) was filed for restoration of the suit by invoking the provisions of Order 9 Rule 4 of the Code of Civil Procedure, 1908 (in short 'CPC') primarily on the ground that with the intervention of common friends and respectables, the matter

was compromised between the parties and it was agreed that the respondent will execute the necessary sale deed in favour of the plaintiff as per agreement dated 22.11.2004 of his share and the plaintiff will withdraw his suit. Similarly, suit for injunction filed by the respondent was also compromised with an understanding that possession shall continue with the petitioner and suit for injunction was withdrawn by Sehbaz Bhatti on 02.01.2007.

Counsel for the petitioner would contend that as the respondent failed to come true to his commitment as per compromise entered into between the parties with the intervention of common friends and respectables and did not execute sale deed in favour of the petitioner, the suit which was earlier dismissed as withdrawn on 02.01.2007 is liable to be restored for its decision on merits. It has further been argued that the learned trial Court committed a serious error rather illegality by dismissing the application filed for the purpose.

Counsel for the respondent, on the contrary, has supported the impugned order with the submissions that neither any compromise was effected between the parties nor statement made by counsel for the petitioner on 02.01.2007 for withdrawal of the suit makes reference to any such compromise. The application for restoration, filed after three years of dismissal of the suit, is nothing but an abuse and misuse of process of law and has rightly been dismissed by the trial Court. It is further submitted that the provisions of Order 9 Rule 4 CPC, by no stretch of imagination, can be invoked in the given circumstances of the case.

I have heard counsel for the parties, perused the paper-book and the order impugned.

Before advertng to the submissions made by counsel for the parties, it is appropriate to note that on August 6, 2014, this Court recorded the submissions made by counsel for the petitioner and the petitioner was called upon to place on record copy of statement as also order whereby the earlier suit was dismissed as withdrawn. Later, an application bearing CM Nos.16534-35-CII of 2014 was filed by the petitioner for placing on record Annexures P-6 and P-7 and the same was allowed on 04.09.2014 and thereafter notice of motion was issued to the respondent. Perusal of Annexures P-6 and P-7 would evident that the petitioner placed on record documents relating to suit for injunction filed by respondent- Dr. Sehbaz Bhatti i.e. statement made by respondent dated 02.01.2007 and the order passed in the said suit of the even date. It further appears that a photocopy of one statement made by the petitioner dated 02.01.2007 counter-signed by his counsel was also appended but without putting any annexure thereto.

A relevant extract from the statement of Narinder Singh, petitioner in the suit titled Narinder Singh vs. Sehbaz Bhatti, translated in English, reads as follows:-

“Statement of plaintiff Narender Singh

Stated that I do not want to proceed with the present case. The same may be dismissed as withdrawn and consigned to the record room.”

The statement does not make reference to any compromise having been effected between the parties or the suit being dismissed as withdrawn on the basis of said compromise. On a pointed query raised by the Court, counsel for the petitioner has fairly conceded that no compromise in writing was executed between the parties. It is also

undenied that application for restoration of the suit was filed after a period of three years from the date the suit was dismissed as withdrawn. There is not even a whisper in the application as to on which date the respondent was to execute the sale deed in favour of the petitioner in view of the alleged compromise effected with intervention of common friends and respectables. Even it has not been averred as to who were those common friends and respectables who intervened. That being so, it is difficult to accept plea of the petitioner that he withdrew the suit due to compromise between the parties or under a bona fide belief. There is no explanation as to why it took long three years in approaching the Court for restoration of the suit. The trial Court rightly refused to rely upon averments made in the application for restoration of the suit that was dismissed as withdrawn without any liberty either to seek its revival or file a fresh suit on the same cause of action.

The application for restoration of the suit was filed under Order 9 Rule 4 CPC. Rule 4 of Order 9 deals with, plaintiff may bring fresh suit or Court may restore suit to file. A relevant extract therefrom, germane to the controversy, reads as follows:-

“4. Plaintiff may bring fresh suit or Court may restore suit to file—
Where a suit is dismissed under rule 2 or rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit, or he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for such failure as is referred to in rule 2, or for his non-appearance, as the case may be, the Court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit.”

Counsel for the petitioner has not disputed that suit filed by the petitioner was neither dismissed under Rule 2 nor Rule 3 of Order 9 in order to attract Rule 4 thereof which provides for filing of a fresh suit or

restoration of a suit that has been dismissed under Rule 2 or Rule 3. In this view of the matter, application filed by the petitioner seeking restoration of the suit by invoking Rule 4 is otherwise not maintainable. Analyzed from any angle, I do not find any error much less illegality in the impugned order warranting intervention.

For the aforesaid reasons, the petition fails and is accordingly dismissed.

SEPTEMBER 29, 2016		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no