

Civil Revision No.5448 of 2016

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.5448 of 2016

Date of Decision: September 05, 2016

Vimal Bafna

...Petitioner

Versus

Dharam Paul Bazaz and Sons & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Brijender Kaushik, Advocate,
for the petitioner.

AMIT RAWAL, J. (Oral)

Petitioner-defendant No.1 is aggrieved of the impugned order, whereby application for framing following two additional issues at the stage of their evidence, has been declined:-

1-A Whether the applicant/defendant No.1 Vimal Bafna was a part and parcel of the defendant No.4 M/s Men's Park on 1.4.2008 or 25.4.2008 as a partner or proprietor or Director etc....OPP

1-B Whether the defendant/applicant is running the business under the name and style as defendant No.3 M/s Nutan Fabrics?.....OPP

Mr.Brijender Kaushik, learned counsel for petitioner-defendant No.1 has drawn the attention of this Court to paragraphs 4 and 5 onwards of the plaint to contend that there is specific averment in the plaint that defendant Nos.1 to 3 have been part and parcel of defendant No.4, which they have separated for running their separate business in the name and style of defendant No.3. In fact, the business transaction was between defendant No.4 and, therefore, framing of additional issues for placing the burden on the petitioner is essential and necessary as defendant No.4 had been proceeded ex-parte. The issues already framed do not envisage the aforementioned situation and as per the issues already framed, onus to prove issue No.6 is upon him as he cannot summon the record of defendant No.4 as it is located at Bangalore and, thus, prays for setting-aside of the impugned order.

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

For the sake of brevity, paras No.4 and 5 of the plaint and the issues already framed vide order dated 22.11.2011 read thus:-

“4. That the defendant No.1 to 3 have been part and parcel of defendant No.4-M/s Men's Park, No.26, 1st Main Road, 3rd Stage, 4th Block, Basveswar Nagar, Bangalore and now they have separated and are running their respective businesses in the name and style of defendant No.1 to 3.

5. *That vide bill No.16140 N dated 01.04.2008 for Rs.4,71,772/- and bill No.16141 N dated 01.04.2008 for Rs.6,54,332/- Fabric was sent to defendant No.4 as ordered at Ambala City vide G.R.No.577001540 dated 02.04.2008 of Jaipur Golden Transport. The goods were delivered to the defendants on 25.04.2008 under receipt. The receipt of goods duly acknowledged by the defendants at the back of aforesaid G/R. Copy of GR is Annexure-C. Copies of bills are Annexure D and E.”*

ISSUES

- 1) *Whether the plaintiff is entitled to recovery of Rs.17,00,000/- alongwith interest as alleged in the plaint? OPP*
- 2) *Whether the suit is not maintainable in the present form? OPD*
- 3) *Whether the plaintiff has concealed true and material facts from the Court? OPD*
- 4) *Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD*
- 5) *Whether the plaintiff has no locus standi to file the present suit? OPD*
- 6) *Whether the suit is bad for mis-joinder of necessary parties? OPD*
- 7) *Whether the plaintiff has no cause of action to file the present suit? OPD*
- 8) *Relief.”*

On perusal of the averments and as well as the issues, the

suit being bad for mis-joinder of necessary parties, the onus is upon the defendants. The defendants must have cross-examined the plaintiff's witnesses vis-a-vis the documents/transaction having been entered with defendant No.4 or not.

In my view, by framing the additional issues, petitioner-defendant No.1 wants to fill up the lacunae. By examining of the additional evidence by putting the onus on plaintiff, petitioner wants to take the already examined witnesses back and cross-examine them again, which tantamounts to circumventing the provisions of law, which is not permissible. The petitioner-defendant is well within his right to discharge the onus on issue No.6 to belie the claim of the respondent-plaintiff, but not in the manner and mode as indicated in the application.

For the foregoing reasons, I do not intend to differ with the findings rendered by the trial Court, which are most appropriate and legal and the order cannot be said to be without jurisdiction.

No case for interference is made out.

Revision petition stands dismissed.

September 5, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No