

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.6287 of 2014(O&M)
Date of Decision:16.12.2016

Dyal Sarup

.....Petitioner

Versus

Vinay Kumar and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Vaneet Soni, Advocate
for the petitioner.

Mr. Gurcharan Dass, Advocate
for respondent No.2.

RAJ MOHAN SINGH, J.

[1]. In this revision petition, petitioner has challenged orders dated 04.02.2014 and 23.07.2014 passed by Civil Judge (Senior Division), Ludhiana to the extent of giving liberty and right to respondent No.2-Ram Partap Puri to file fresh written statement.

[2]. An agreement to sell was executed between the petitioner and respondents No.1 and 2 on 16.04.2007 whereby respondent No.2 agreed to sell the land measuring 160 kanals for a total sale consideration of Rs.1,80,00,000/-. An earnest

amount to the tune of Rs.60 lakhs was paid to respondent No.2. Target date was fixed as 25.09.2008, which was extended upto 20.01.2011 on further payment of Rs.20 lakhs. In this way, total earnest amount was claimed to be Rs.80 lakhs. On 24.02.2011, respondent No.1 transferred half share to plaintiffs No.2 to 5. On 26.02.2011, Civil Suit for specific performance was filed. Respondent No.2-Ram Partap Puri filed the written statement through Sh. M.S. Sood, Advocate on 04.04.2011 which was prepared on 21.03.2011.

[3]. Pooja Chopra was appointed as general power of attorney on behalf of respondent No.2. A compromise was allegedly entered into between the parties and on receiving the balance sale consideration, suit was decreed by the Lok Adalat on 25.02.2012. The said compromise was challenged by respondent No.2 through new general power of attorney Kuldeep Kaur. Evidence was led and the compromise was recalled. The suit was ordered to be restored vide order dated 04.02.2014. In the said order, it was held that in view of statements suffered by the plaintiffs and their counsel, award dated 25.02.2012 passed by Lok Adalat was set aside and original suit was restored to its original number. Written statement was filed on behalf of respondent No.2. However, the averments made in the application were to the effect that the

award as well as the evidence led by the parties be set aside. The validity of the written statement was also questioned as defendant No.2/respondent No.2 had alleged that the Advocate engaged by him has misused his signatures and had tried to dupe him of his properties by forging the different documents got signed by him by using blank papers. Respondent No.2 claimed that plaintiff Binny Bawa and others were close associates of his counsel and by acting fraudulently, they forged the power of attorney in favour of Pooja Chopra and on the basis of such forged power of attorney, lawyers were engaged on his behalf and such impostor attorney also suffered statement to get the suit decreed.

[4]. In view of aforesaid, liberty was given to respondent No.2 to file fresh written statement in order to contest the suit. To the extent of allowing respondent No.2 to file fresh written statement, petitioner has filed the present revision petition.

[5]. Learned counsel for the petitioner submitted that the earlier written statement was filed through Mr. M.S. Sood, Advocate and the subsequent application filed by Kuldeep Kaur, general power of attorney of respondent No.2 was also filed through the same counsel, therefore, the allegation of fraud at the instance of the counsel cannot be sustained. An application was filed under Section 151 CPC for rejection of second written

statement filed by respondent No.2. The ground for such a challenge that instead of filing fresh written statement, an amendment of previous written statement under Order 6 Rule 17 CPC should have prayed for. The application in question was dismissed on 23.07.2014 on the premise that earlier order dated 04.02.2014 was not challenged in appropriate Forum, nor the same was set aside by any competent Court. That is why, in the present revision petition, both the aforesaid orders came to be challenged.

[6]. I have heard learned counsel for the parties.

[7]. Learned counsel for the petitioner vehemently contended that in the application filed by respondent No.2 for adjournment of the case i.e. Annexure P-3 attached with the revision petition, in para No.2, respondent No.2 alleged that the factum of filing written statement by Mr. M.S. Sood, Advocate came to be noted by respondent No.2 and that was claimed to be without authority and was sought to be removed from the record. The said application was not decided and in the meanwhile, compromise in the suit came to be recorded when general power of attorney of respondent No.2 namely Pooja Chopra entered into compromise with the plaintiffs on 24.02.2012 before the Lok Adalat. Award was passed on 25.02.2012 and civil suit was decreed.

[8]. Thereafter, application dated 03.03.2012 came to be filed by respondent No.2 for setting aside the award through general power of attorney Kuldeep Kaur. Earlier general power of attorney was replaced by new general power of attorney Kuldeep Kaur. This very application was also filed through the same counsel i.e. Mr. M.S. Sood, Advocate. The impugned order dated 04.02.2014 came to be passed only on this application filed through Mr. M.S. Sood, Advocate. On the statements of all the plaintiffs, the award was set aside and respondent No.2 was given liberty to file fresh written statement.

[9]. On the other hand, learned counsel for respondent No.2 contended that respondent No.2 has already filed a civil suit for declaration, challenging the acts of fabrication of documents. In the said suit, Mr. M.S. Sood, Advocate has been arrayed as defendant No.3, Binny Bawa as defendant No.29, Dayal Saroop as defendant No.32 and Vinay Kumar as defendant No.34. There are 63 defendants in the said suit. It was alleged that Civil Suit titled as Binny Bawa and others Vs. Vinay Kumar and others i.e. Civil Suit No.34 dated 01.03.2011 was decreed on fraud and fabricated document. Further compromise dated 20.09.2008 was also forged and fabricated. Compromise dated 28.03.2011 was also forged and fabricated having been filed in connivance with defendant Ashok Kumar

Sabharwal.

[10]. It was asserted that Ashok Kumar Sabharwal forged another agreement purportedly signed by the plaintiff on the basis of which Civil Suit titled as Binny Bawa and others Vs. Vinay Kumar and others was filed. The consequence of compromise was claimed to be forged and fabricated. The power of attorney on behalf of the plaintiff in favour of Pooja Chopra was also the result of forgery. Plaintiff claimed that when the case was fixed for 02.03.2012 and his attorney Kuldeep Kaur appeared, then factum of earlier proceedings came to be noticed. Pooja Chopra was claimed to be impostor attorney, suffered a statement on behalf of plaintiff and got the award passed. Allegations were made against the Advocates appearing in the case who were instrumental in the aforesaid act of forgery.

[11]. In the civil suit, plaintiff also asserted that Tejinder Singh and others filed a Civil Suit titled as Tejinder Singh Vs. Ram Partap Puri for specific performance i.e. Civil Suit No.274-A of 05.06.2010. The said suit was pending before the trial Court at Kapurthala. In the said suit, Mr. M.S. Sood, Advocate appeared on behalf of Ram Partap Puri without receipt of any notice, rather no service was effected. The Advocate had appeared by filing memo of appearance and later

on, filed written statement and power of attorney under signatures of Krishan Dev who had no authority to appear on behalf of plaintiff. Ashok Kumar Sabharwal appeared through one Advocate and also filed written statement admitting the claim of the plaintiff. Mr. M.S. Sood, Advocate filed written statement under signatures of Krishan Dev under some conspiracy hatched by the defendant. Number of instances were quoted in the said suit.

[12]. Learned counsel for the respondent submitted that once the award was set aside and the suit was ordered to be decided on merits, then parties were at liberty to file fresh written statement. By citing **Muthusamy Vs. Thangaraj, 2005 (4) RCR (Civil) 569 (Madras)**, learned counsel submitted that the Court can allow the defendant to file additional written statement even after the trial had commenced. There should be liberal construction under Order 8 Rule 9 CPC and wide discretion has been given to the Court. The filing of additional written statement or fresh written statement under Order 8 Rule 9 CPC can be allowed, if the same does not cause any prejudice to the plaintiff. By referring to **Muthuraman Vs. Muthukumaran, 2008 (4) CivCC 59 (Madras)**, learned counsel emphasized that Order 8 Rule 9 CPC has to be construed to advance cause of justice.

[13]. At last, learned counsel submitted that Order dated 04.02.2014 passed by Civil Judge (Senior Division), Ludhiana was not passed on the merits, but on the statements of the plaintiffs as they thought that on the basis of evidence, there was likelihood of setting aside the compromise and their evil design will be exposed.

[14]. Both the parties have tried to argue the main suit with reference to intricacy of facts and evidence at this stage. Larger consideration of the entire dispute is not the subject matter of present revision petition. Since the proceedings are pending before the trial Court, therefore, anything recorded on the merits of the case may frustrate the claim of either sides at the trial. The only consideration at the hands of this Court is with regard to allowing respondent No.2 to file fresh written statement in the suit.

[15]. As earlier noticed, this Court is constrained to observe anything on the merits of the suit, at this stage, lest it may prejudice the case of either sides. The consideration of the subject matter is confined to the liberty given to respondent No.2 to file fresh written statement in the light of facts and circumstances of the case.

[16]. Apparently, earlier written statement on behalf of respondent No.2 was filed through Mr. M.S. Sood, Advocate.

Even the second application dated 03.03.2012 was also filed through the same Advocate i.e. Mr. M.S. Sood, Advocate. Trial Court while passing the order dated 04.02.2014 has not adverted to the circumstances in which the second application was filed through the same counsel. Even though, at the time of deciding the application, plaintiffs No.2, 3 and 5 were represented by Mr. R.S. Dhillon, Advocate, but the circumstances in which Mr. M.S. Sood, Advocate filed application on 03.03.2012 were not answered with reference to events on record. Trial Court was required to spell out the reasons for which earlier written statement filed by Mr. M.S. Sood, Advocate was considered proper for further progress of the case or otherwise. The entire controversy was decided by suffering statements on 11.01.2014 vide which award of the Lok Adalat dated 25.02.2012 on the basis of compromise was set aside and the suit for specific performance was ordered to be decided on merits.

[17]. At this stage of the litigation, this Court is quite hesitant to observe anything on ultimate merits of the case. The factum of fraud or otherwise would be sufficiently adverted to by the trial Court with reference to evidence at the relevant stage. At this Stage, this Court is much concerned about the nature of application filed by Mr. M.S. Sood, Advocate on 03.03.2012,

whether that application was self incriminatory or otherwise?

The conduct of the counsel should have been discussed by the trial Court in order dated 04.02.2014. So without commenting on the merits of other grounds on which the impugned order dated 04.02.2014 was passed, I am of the view that the trial Court should have spelt out the reasons for filing the application dated 03.03.2012 through the same counsel i.e. Mr. M.S. Sood Advocate. The conduct of the Advocate leading to filing the application in question has to be borne on record with reference to events in which the conduct of the Advocate was alleged to be fraudulent. It would be appropriate to ask the trial Court to give reasons in the context whether subsequent application was materially in contrast with the claim set up by the defendant or was replica of earlier stand.

[18]. In view of the aforesaid, this case is remanded to the Civil Judge (Senior Division), Ludhiana to pass an appropriate order in view of observations made in preceding paras of the order for limited purpose of giving reasons for filing application dated 03.03.2012 by the same counsel i.e. Mr. M.S. Sood, Advocate on behalf of respondent No.2 and further dropping him to represent the cause of respondent No.2. Since the entire controversy hinges upon the alleged authority given to Mr. M.S. Sood, Advocate for filing first written statement and second

application, therefore, it would be just and appropriate to direct the trial Court to consider this aspect of the case and decide the same afresh.

[19]. With these observations, this revision petition is disposed of.

16.12.2016
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No