IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.6924 of 2016 (O&M)
Date of decision:22.12.2016

Shalini Gulati ... Petitioner

Vs.

Sharda Gulati and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Kanwarpal Singh Cheema, Advocate with
Mr. Arvind Kashyap, Advocate
for the petitioner.

Mr. M.L.Sarin, Senior Advocate with
Mr. KVS Kang, Advocate
for respondents No.1 and 3.

Mr. Vikas Cuccria, Advocate
for respondent No.2.

AMIT RAWAL J. (Oral)

Before the arguments in the revision petition could be commenced, Mr.M.L.Sarin, learned Senior Counsel assisted by Mr. KVS Kang, Advocate appearing on behalf of respondents No.1 and 3 prayed to this Court to decide the application bearing No.25643-CII-2016 by annexing certain documents to convince this Court that there had been a checkered litigation between the husband and wife namely, Naresh Gulati and Shalini Gulati in the Courts at Australia, wherein, she had suffered an affidavit dated 09.01.2015 withdrawing all the cases but intentionally did not disclose the factum of pendency of aforementioned suit, thus, seeks indulgence of this Court to apply the *doctrine of comity.*

However, before I could hear the arguments on merits, at this stage, Mr. Kang seeks permission of this Court to withdraw the aforementioned application with liberty to move an application by invoking the provisions of Order 7 Rule 11 of the Code of Civil Procedure in the suit pending adjudication.

In view of the aforementioned, the application is ordered to be dismissed as withdrawn with the liberty aforementioned. In case, any such application is filed, the Court seized of the matter, shall endeavour to decide the application as expeditiously as possible preferably within a period of three months after completion of the pleadings.

Petitioner-plaintiff is aggrieved of the impugned order dated 20.09.2016, whereby, the application seeking amendment of the plaint by incorporating the prayer and following clauses has been dismissed by the Court below:-

> *"Suit for declaration to the effect that the plaintiff is the owner of 100% share of house No.1596 Sector 18-D, Chandigarh as the same has been purchased out of the consideration so received by defendant No.1 from the transfer of 9031 shares of the plaintiff in favour of Oceanic Consultant Pty. Ltd. Australia, from the transfer of 469 shares in favour of Oceanic Consultant Pty. Ltd. Australia and from the funds transferred from the account of plaintiff in favour of defendant No.1 and her family members without consent and knowledge of the plaintiff."*
>
> *5. That the plaintiff wants to amend the para no.2 as follows:*

2. That the defendant No.3 along with Sharda Gulati and others cheated the plaintiff of her various shares in the companies to the tune of crores of rupees qua which FIR No.23 dated 06.02.2011 has been registered u/s 406, 420, 120-B IPC at Police Station, Sector 3, Chandigarh. The plaintiff was the owner of 9500 shares of Oceanic Consultant (P) Ltd. India. Out of these 9500 shares, 469 shares were shown to have been sold by the deponent to M/s Oceanic Consultant Pty. Ltd. Australia for a sum of Rs.60 lacs. Though the plaintiff had never knowingly executed any such share sale agreement yet defendant no.1 and 3 somehow obtained her signatures in connivance with their Chartered Accountant Sanjeev Mehan and portrayed that deponent had entered into this Agreement to Sell with her own will and consent. Subsequently the remaining 9031 shares were showing to have been gifted by the plaintiff in favour of defendant No.1 without any consideration. These shares have been subsequently transferred by defendant no.1 in favour of Oceanic Consultant Pty. Limited for consideration. As per the share sale agreement of 469 shares, it transpires that the value of 9031 shares would be around 11.5 crores. This consideration was received by the defendant no.1 and was used for purchase of # 1596, Sector 18-D, Chandigarh.

6. That the plaintiff also wants to amend the para no.5 of the suit as follows:-

5. That it is one again pertinent to mention here that the plaintiff admittedly had been turned out of her matrimonial house on 29.03.2010. All the above transactions have been made under the signatures of the defendant No.3 without the consent or knowledge of the plaintiff. The amount of rupees around 11.5 crore so received by defendant no.1 from the transfer of 9031 shares of the plaintiff in favour of Oceanic Consultant Pty. Ltd. Australia and the amount of Rs.60 lakhs withdrawn by defendant no.3 along with the amount transferred from the account of plaintiff in favour of defendant no.1 and her relatives has been utilized for the purchase of house no.1596, Sector 28-D, Chandigarh.

7. That the plaintiff wants to amend the para no.6 of the suit as follows:-

6. That it is evidently clear that the entire consideration amount for the purchase of said house has been obtained from the transfer of 9031 shares of the plaintiff in favour of Oceanic Consultant Pty. Ltd., Australia, consideration of 60 lakhs received from transfer of 469 shares by defendant no.1 and also from the amount which has been diverted from the account of the plaintiff to that of defendant no.1 and her family members. The plaintiff craves the indulgence of this

Hon'ble Court to be declared the owner to the extent of 100% share of house no.1596, Sector 18-D, Chandigarh as the consideration for the same has been paid by defendant no.1 by transferring of 9031 shares which were held by plaintiff and which were fraudulently transferred.

8. That the plaintiff wants to amend the prayer clause as follows:

It is prayed that the decree for declaration may kindly be passed to the effect that the plaintiff is the owner of 100% share of house no.1596 Sector 18-D, Chandigarh as the same has been purchased out of the consideration so received by defendant no.1 from the transfer of 9031 shares of the plaintiff in favour of Oceanic Consultant Pty. Ltd. Australia from the transfer of 469 shares in favour of Oceanic Consultant Pty. Ltd. Australia and from the funds transferred from the account of plaintiff in favour of defendant no.1 and her family members without consent and knowledge of the plaintiff.

It is further prayed that a decree for permanent injunction restraining the defendant no.1 from alienating, mortgaging or creating third party interest over the suit property, i.e., house no.1596 Sector 18-D, Chandigarh without giving due share to the plaintiff or without written consent of the plaintiff may also be passed in favour of the plaintiff and *against the defendants.*

It is further prayed that a decree for mandatory injunction directing the defendant no.2 not to transfer the suit property in favour of any person, without giving prior intimation or notice to the plaintiff may also be passed in favour of the plaintiff.

Any other relief which this Hon'ble Court may deem fit and proper may also be passed in favour of the plaintiff."

Mr. Kanwarpal Singh and Mr. Arvind Kashyap, learned counsels appearing on behalf of the petitioner-plaintiff submits that prior to the application, the suit aforementioned was filed claiming 50% share holding in the house No.1596, Sector 18-D, Chandigarh. However, the amendment sought to be incorporated is seeking declaration qua 100% share in view of the fact that during the pendency of the suit, petitioner acquired the knowledge in pursuance to the affidavit filed by Naresh Gulati -defendant No.3 herein in the present suit in Australian Court regarding the aforementioned controversy. After applying its copy and having obtained the certified copy of the affidavit in the year 2016, the present application was filed. This fact has not been taken care of by the Court below, thus, there is gross illegality and perversity in the impugned order. The suit is at the stage of plaintiff's evidence and other party would not be prejudiced, rather would have a right to cross-examine on this aspect, in case, the amendment is allowed. The parameters for allowing the amendment in the plaint and written statement are totally different. It is a subsequent event, therefore, the amendment caused falls within the expression "*despite exercise of due diligence*", thus, the order under challenge is not sustainable.

Mr.M.L.Sarin, learned Senior Counsel assisted by Mr. K.V.S.Kang, Advocate appearing on behalf of respondents No.1 and 3 submits that the amendment sought to be incorporated was in the knowledge of the petitioner-plaintiff and in this regard, has drawn the attention of this Court to the application (Annexure A-18) moved under Order 6 Rule 17 read with Section 151 CPC titled as Shalini Gulati vs. M/s Oceanic Consultants (P) Ltd and others, seeking amendment of the plaint, wherein, similar kind of amendment was sought to be incorporated and thus, submits that once the amendment was in her knowledge and when no subsequent event had taken place, much less as being sought to be alleged, is not accompanied by any document, therefore, the Court had an occasion to dismiss the application. The order under challenge is perfectly legal and justified and does not call for any interference. After framing of the issues, the suit was pending for a period of 04 years, but no steps have been taken. The pendency of the suit is nothing but hanging a fire forcing defendants to arrive at some settlement.

Mr. Vikas Cuccria, learned counsel appearing on behalf of respondent No.2 submits that he has been arrayed as party being defendant No.2 in the suit. He adopts the arguments of Mr. Sarin.

In rebuttal, Mr. Kanwarpal Singh, Advocate submits that there is stark difference between the averments made in the previous application and present one as in the previous application, the amendment sought to be incorporated was owing to the gift of the shares, i.e., 9031 out of total 9500 belonging to the petitioner-plaintiff, in fraudulent manner in favour of Sharda Gulati and also sale of 469 shares to the M/s Oceanic Consultants (P) Ltd, Australia. However, the amendment sought to be incorporated in the present suit is with regard to sale which according to him was allegedly affected in the year 2014. This fact acquired knowledge, as indicated above in the year 2016 , therefore, there is no commonality in the previous application and present one, therefore, the order under challenge is liable to be set aside.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Kanwarpal Singh, for, in order to appreciate the controversy seeking amendment of the suit, it would be apt to reproduce paragraph 6 of the application filed in a suit which is stated to have been withdrawn which reads thus:-

> *"6. That the applicant/plaintiff wants to delete para no.9 of the plaint and wants to replace the same with following paras"*
>
> *That recently on 23.9.2010 on enquiry from reliable sources, the plaintiff has come to know that the defendant no.2 to 3 have very cleverly in connivance with each other forged the share transfer from dated 23.10.2009 vide which she has allegedly transferred 9031 shares out of total 9500 shares of the plaintiff in favour of defendant no.3 without any consideration. It has*

further come to the knowledge of the plaintiff that the defendant no.2 and 3 forged another share sale agreement dated 1.12.2009 vide which the plaintiff has transferred 469 shares out of 9500 shares held by her in favour of M/s Oceanic Consultant Pty. Ltd. Australia for consideration of Rs.60 lacs. In furtherance of their fraud, the defendant No.2 and 3 have forged the share transfer from dated 2.12.2009 vide which 469 shares of the plaintiff have been transferred to M/s Oceanic Consultant Pty. Ltd. Australia. It is pertinent to mention here that defendant No.2 is the owner of C.E.O of M/s Oceanic Consultants Pty. Ltd. Australia. In furtherance of the conspiracy, defendant no.2 also deposited a sum of Rs.60 lacs into the joint account owned by the plaintiff with defendant no.2 showing that to be the consideration for the 469 shares. However, the same was withdrawn by the defendant no.2 under his own signatures from the bank and no consideration whatsoever has been received by the plaintiff. It is further come to the knowledge of the plaintiff that defendant no.2 to 4 have also very cleverly removed the name of the plaintiff from the Board of Directors of M/s Object Next Software (P) Ltd. by using the forged and fabricated resignation letters which were got signed by the defendant No.3 from plaintiff by using his fiduciary relationship with the plaintiff and the digital signatures which were retained by defendant no.3. Not only *this, the shares of the plaintiff have also been transferred into the name of the defendant No.3 and other people using forged and fabricated documents. The plaintiff has initiated separated criminal proceedings as well as civil proceedings for declaring these transfers illegal and void. Not only this, defendant no.3 used one of these papers to file for NOC of House No.1633, Sector 18-D, Chandigarh for transferring 50% share of the said house in his name."*

In my view, a clever and guarded language is being used in the application. The present application seeking amendment of the suit is not accompanied by any document regarding the sale of shares Even the affidavit filed by the husband in the Australian Court is of 2014. No explanation has come forth in moving the application, aforementioned, in the year 2016. It is nothing but an adoption of dilatory tactics which cannot be permitted to continue on the wish and whim of the plaintiff. In my view, the finding arrived at by the Court below in declining the application is perfectly legal, justified and does not call for any interference.

No ground is made out for interference in the impugned order, much less the same cannot be said to have been passed without jurisdiction.

Accordingly, the revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

December 22, 2016
savita
Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No