

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

CR No.7374 of 2016
Date of decision : 07.11.2016

Krishan Kumar

...Petitioner

Versus

Gurcharan Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. S.K. Jain, Advocate for the petitioner.

AMIT RAWAL, J. (Oral)

The petitioner-defendant No.1 is aggrieved of the impugned order dated 15.09.2016, whereby application moved under the provision of Section 10 of the Code of Civil Procedure seeking stay of the subsequent suit i.e. Civil Suit bearing No.90 dated 26.04.2012, has been dismissed.

Mr. S.K. Jain, learned counsel appearing on behalf of petitioner-defendant No.1 submits that pith and substance of both the suits is identical. It is in this aspect of the matter, provisions aforementioned were invoked but the Court below has erroneously dismissed the application on the ground that copy of the suit was not accompanied but remain oblivious of the fact that both the suits were tried by the same Court. On going through

the entire relief running into eight pages, it is evident that suit is based upon the identical and one cause of action and, therefore, second suit was liable to be stayed. Essentially the plaintiff is seeking correction in the account books with regard to the entries of particular amount and thus submits that order under challenge is not sustainable in the eyes of law.

I have heard learned counsel for the petitioner-defendant No.1 and appraised the paper book and of the view that relief sought in both the suits reads as under:-

“Relief part in earlier suit:-

Suit against defendant No.1 for recovery of Rupees nine lac only, which is due to the plaintiff from it/him after deduction of amounts of money, plaintiff has received from the defendant No.1 during the period of 1st April, 2005 upto 30th of April 2008 out of the sale prices of the crop produces, Hari 2005, Sauni 2005, Hari 2006, Sauni 2006, Hari 2007, Sauni 2007 and Hari 2008, received by the defendant No.1 from the purchaser of these crop produces above, sold by the plaintiff through defendant No.1.

And

Suit against defendant Nos.1, 2 and 3 for declaration to the effect that defendant No.1 in connivance with defendant No.2 and 3 with the intention to misappropriate amount of Rs.10 lac or so which defendant No.1 owes to the plaintiff and which defendant no.1 in connivance with defendant no.2 and 3 with the intention to mis-appropriate that amount of money of the plaintiff has omitted to enter into books of account and which amount of the defendant no.1 with the help of not entering the sale of the produces Hari 2005, Sauni 2005, Hari 2006, Sauni 2006, Hari 2007, Sauni 2007 and Hari 2008, to enter into his account books

kept to maintain the accounts of M/s Kanshi Ram Atma Ram, Commission Agent, Mansa and with the help of not entering the price of these produces above in his account books above, and out of which sale prices above, after having to had been deducted the amount of money received by the plaintiff as stated above from the defendant no.1 above, which comes to Rs.10 lacs or so, which is still lying deposited with defendant no.1 and that as such that omission above committed by defendant no.4 in connivance with defendant No.2 & 3 by not entering the crop produce above, sold through it in its account books can not debar the plaintiff to claim his Rs.10 lacs or so, which is still lying deposited with defendant no.1, and from defendant no.1.

Relief part in subsequent suit:-

Suit for declaration to the effect that cheque dated 18.7.2009 for the value of Rs.12,33,200/- (Twelve lac Thirty Three thousand two hundred only) was allegedly drawn upon the Bank of Punjab Branch Mansa, allegedly issued by plaintiff in favour of firm M/s Kanshi Ram Atma Ram, Commission Agents, Grains Market, Mansa Mandi Shop No.217 and against firm M/s Mian Commission Agents, Grain Markets, Mansa Mandi, Shop No.217 (now closed since the 31st of March, 2007) which is wrong and against facts and law and is false and fraudulent and is null and void and is ineffective qua the rights of the plaintiff and plaintiff is not bound by it and that defendant no.1 is not entitled to recover any amount of money from the plaintiff on the basis of this false and fraudulent cheque above.

And

With the declaration to the effect that the entries in the books of accounts, of the firm M/s Kanshi Ram Atma Ram,

Commission Agents, Grain Market, Mansa Mandi, Shop No.217, showing therein facts adversely to the plaintiff that the plaintiff has taken a loan of Rs. 12 lacs from this firm above, dated 25.4.2009 for getting rid himself from the financial crisis, his firm M/s Mian, Commission Agents was struggling with which are wrong and against fact and law and has been fabricated by defendant No.1 in connivance with defendants No.2 to 5, to cheat the plaintiff of his money amounting to Rs.12 lacs and are false and fraudulent and are null and void and plaintiff is not bound by these false and fraudulent entries above and the defendant no.1 is not entitled to recover any amount of money from the plaintiff on the basis of these false and fraudulent entries above.”

On juxta position of the aforementioned reliefs, matter in issue can not be said to be rightly and substantially the same as declaration qua entry of recovery of ₹10,00,000/- has been sought in previously instituted suit bearing No.202 dated 13.10.2010 and the second suit regarding the cheque dated 18.07.2009 for the value of ₹12,33,200/-. Even second relief is with regard to the entry in the books account of M/s Kanshi Ram Atma Ram, regarding the amount of ₹12,00,000/- whereas in the first suit, it is with regard to the ₹10,00,000/- in the account book for different transaction, thus, matter cannot be said to be squarely falling within the provision of Section 10 of CPC, rightly so, application has been dismissed but the Courts below ought not to have dismissed the application primarily on account that it was not accompanied by the suit when both the suits were filed simultaneously.

I do not find any illegality and perversity in the order under

challenge.

No ground for interference is made out.

Accordingly, present revision petition is dismissed.

07.11.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No