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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-7475-2014 (O&M)
Date of decision : 16.03.2016

Chander Pati

...Petitioner

Versus

Virender Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. B.S. Rana, Senior Advocate with
Mr. Gagandeep Rana, Advocate
for the petitioner.

Mr. C.B. Goel, Advocate
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

AMIT RAWAL, J. (ORAL)

CM-28540-CII-2014

Prayer in this application filed under Order 22 Rules 4 read with Section 151 CPC is for impleading the legal representatives of respondent No.1, namely, Virender Singh who is stated to have died on 03.11.2014.

For the reasons stated in the application, the application is allowed and the legal representatives respondent No.1, namely, Virender Singh, are permitted to be brought on record for the purpose of prosecuting the petition.

CM stands disposed of.

CR-7475-2014

The petitioner-defendant is aggrieved of the dismissal of the application seeking amendment of the written statement.

Mr. B.S. Rana, learned Senior Counsel assisted by Mr. Gagandeep Rana, learned counsel for the petitioner-defendant submits that in a suit for specific performance of agreement to sell dated 18.01.1995 seeking execution and registration of the sale deed, the petitioner-defendant had engaged the services of one Advocate, namely, Surender Singh Khaja, who had further appointed an Advocate Ravinder Singh Raghav, at Gurgaon, filed a written statement, whereby the contents of agreement were admitted. The petitioner-defendant had given a power of attorney to her brother, who on the basis of the same, executed a sale deed in favour of his wife on 25.05.1995. The aforementioned sale deed has been challenged in the present suit, but owing to litigation, against siblings, could not move application, which ultimately was decreed in her favour on 30.10.2012. Accordingly, the application for amendment of the written statement was filed in the year 2014. The un-amended written statement is dated 15.01.2008 whereby, the contents of the agreement have been admitted. By virtue of the amendment, she wants to explain that a fraud having played upon her at the instance of the plaintiff. The written statement was not signed by her nor no authority was given to the counsel to file the same and but, the trial Court erroneously dismissed the application on the ground that no explanation has come forth in explaining the reasons of seeking amendment “despite exercise of due diligence” and thus, prays for setting aside of the impugned order. In support of his contentions, he relies upon the judgment of Hon'ble Supreme

Court in "Baldev Singh and others V/s Manohar Singh and another" 2006 (3) RCR (Civil) 844, to contend that the admission can be explained by seeking amendment in the written statement.

Mr. C.B. Goel, learned counsel appearing on behalf of the respondents-plaintiffs submits that the amendment is highly belated and the case has reached at the stage of plaintiff's evidence. Though, the affidavit in examination-in-chief has been submitted. The petitioner-defendant had voluntarily executed the agreement and had also appeared before the Civil Judge on 09.06.2008 and suffered a statement without oath. A copy of the same has been handed over during the course of the hearing. She has also appended her right thumb impressions. The amendment sought to be incorporated tantamounts to withdrawal of the admission and in the peculiar facts and circumstances of the case, a valuable right has accrued which cannot be taken by seeking the amendment as the amendment is complete somersault to the categorical admission of the un-amended written statement and prays for dismissal of the revision petition.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no substance in the revision petition. There is no dispute to the ratio decidendi culled out in the judgment referred to, the facts and circumstances of each case have to be seen, but once, the petitioner-defendant had suffered a statement before the Court on 09.06.2008 and chosen to move an application in 2014, it is lacking statutory compliance of expressions "despite exercise of the diligence", in my view, is not entitled to seek the amendment. No criminal complaint or FIR has been lodged against the alleged conspirators or perpetrators of the alleged fraud. Even the decree relied

upon by the petitioner-defendant is of the year 2012, whereas, the application was filed in the year 2014. No explanation of almost two years has come forth, thus, the amendment is nothing, but an act of volte-face, which is not permissible in law.

Keeping in view aforementioned facts and circumstances, no reason is made out for interference in the impugned order and the same is affirmed and accordingly, the petition is dismissed.

The parties are directed to appear before the trial Court on 21.04.2016.

16.03.2016
yogesh

(AMIT RAWAL)
JUDGE