

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.1075 of 2017
Date of decision: 15.02.2017

Raj Rani

... Petitioner

Vs.

Krishan Lal and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Vikas Kuthiala, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK, J. (ORAL)

Feeling aggrieved against the order dated 20.01.2017 passed by the learned trial Court, permitting the plaintiff to file his written statement to the counter-claim of defendant No.1-petitioner, she has approached this Court by way of present revision petition under Article 227 of the Constitution of India, for setting aside the impugned order.

Heard learned counsel for the petitioner.

The primary contention raised by learned counsel for the petitioner is that the written statement to the counter-claim was sought to be filed by the plaintiff after inordinate long delay of about 08 years. However, this contention raised by learned counsel for the petitioner has been found wholly misconceived, for the reason that on the maintainability of the counter-claim of

the petitioner, this Court decided the matter only on 07.04.2016 in CR No.499 of 2014, to which petitioner was also party. Under these circumstances, it can be safely concluded that learned trial Court committed no error of law, while passing the impugned order.

It is the settled proposition of law that every party to the litigation must be granted due opportunity to put up their best case before the Court. Nobody should be forced to go home with the grievance that sufficient opportunity was not granted to him. Further, a bare perusal of the impugned order would show that the learned trial Court was conscious of this fact that there was some delay at the hands of the plaintiff in filing reply to the counter-claim of the petitioner. This was the reason that application of the plaintiff for seeking permission to file the written statement to the counter-claim was allowed, subject to payment of costs of Rs.4,000/-, which was to be paid to the present petitioner-defendant No.1. Having said that, this Court feels no hesitation to conclude that learned trial Court was well within its jurisdiction to pass the impugned order and the same deserves to be upheld, for this reason also.

During the course of hearing, learned counsel for the petitioner could not point out any patent illegality or perversity in the impugned order, which may warrant interference at the hands of this Court, while exercising its revisional jurisdiction. Further, no prejudice is likely to be caused to the petitioner, by passing the impugned order and the same deserves to be upheld, for this reason as well.

To be fair to learned counsel for the petitioner, his next contention that the application moved by the plaintiff-respondent No.1 was not under the

relevant provisions of law is to be noted to be rejected. It is so said because it is not the form of application, but the substance thereof, which would be material. If the learned counsel for the plaintiff, while drafting the application, prepared the same under Section 151 of the Code of Civil Procedure, without referring to the other relevant provisions of law, the learned trial Court shall not be precluded from exercising its discretion. That is what has been done by the learned trial Court, while passing the impugned order.

There could not be any doubt about the law laid down in the judgment of the Hon'ble Supreme Court, relied upon by learned counsel for the petitioner in **National Institute of Mental Health & Neuro Sciences Vs. C. Parameshwara, 2005 (2) SCC 256** and of this Court in **State of Punjab Vs. Bhag Singh, 1998 (3) RCR (Civil) 105**. However, a close perusal of the cited judgments would show that none of them is of any help to the petitioner, being distinguishable on facts. The cited judgments were based on entirely different set of facts. It is settled principle of law that peculiar facts and circumstances of each case are to be examined, considered and appreciated first before applying any codified or judgemade law thereto. Sometimes, difference of even one additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausund Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533**, **Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75**, **State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275** and **State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533**.

With a view to avoid repetition and also for the sake of brevity, the observations made by the Hon'ble Supreme Court in para 11 and 12 of its later

judgment in **Ganeshi Lal**'s case (supra), reiterating its earlier view taken in **Amrit Lal Manchanda**'s case (supra) and **Mohd. Illiyas**'s case (supra), which can be gainfully followed in the present case, read as under:-

“11. “12....Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a

precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides. Coming to the peculiar fact situation obtaining on record of the present case, it is unhesitatingly held that learned Permanent Lok Adalat discussed, considered and appreciated each and every relevant aspect of the matter, before passing the impugned award. The only endeavour made by the learned Permanent Lok Adalat was to do complete and substantial justice between the parties and this approach adopted by learned Permanent Lok Adalat has been found well justified on facts as well as in law. Ed. See State of Orissa Vs. Mohd. Illiyas, (2006) 1 SCC 275 at p.282, para 12.

12. 15....Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they

appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

16. In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said (at All ER p.297g-h), "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in Shepherd Homes Ltd. V. Sandham (No.2) (1971) 1 WLR 1062 observed: (All ER p. 1274d-e) "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or

judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

17. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

15. The following words of Lord Denning in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT, AIR 1962 SC 680

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it Ed. See Union of India Vs. Amrit Lal Manchanda, (2004) 3 SCC 75, pp. 83-84, paras 15-18."

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present revision petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant revision petition stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

15.02.2017

vishnu

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No