

HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No. 1596 of 2016
Date of decision: 03.05.2017

M/s Gurdeep Singh and others

...Petitioners

Versus

Makhan Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Varun Garg, Advocate
for the petitioners

Mr. Nitin Kaushal, Advocate
for the respondent

RAMESHWAR SINGH MALIK, J. (Oral)

Present revision petition, at the hands of the defendants-petitioners filed under Articles 227 of the Constitution of India, is directed against the order dated 08.02.2016 (Annexure P-1), whereby the defendants-petitioners were directed to lead their evidence first.

Notice of motion was issued and in the meanwhile, proceedings before the Court below were stayed.

Heard learned counsel for the parties.

It is a matter of record that directing the defendants-petitioners to lead their evidence prior to the plaintiff, the learned trial Court framed the following issues:-

- 1. Whether the amount received by the defendant of Rs. 50 lacs from the plaintiff is the amount of any existing liability of the plaintiff towards the defendant? OPD*
- 2. Whether the plaintiff is entitled to recovery of Rs. 50 lacs from the plaintiff with interest, if so, at what rate? OPP*

3. *Whether the suit of the plaintiff is maintainable and the plaintiff has locus standi to file the present suit? OPP*

4. *Relief.*

The trial Court has rightly put onus to prove issue Nos. 2 and 3 on the plaintiff. Onus to prove issue No. 1 was put on the defendants. Once the onus was rightly put on the plaintiffs qua issue Nos. 2 and 3, the learned trial Court misdirected itself while directing the defendants to start leading their evidence first. Neither issue No. 1 was ordered to be treated as preliminary issue nor the defendants-petitioners were directed to lead their evidence only qua issue No. 1. Having said that, this Court feels no hesitation to conclude that the learned trial Court exceeded its jurisdiction in passing the impugned and the same cannot be sustained.

Infact, the impugned order would show that it is not only a non-speaking and cryptic order but it is also patently illegal. It is so said because the plaintiff ought to have been directed to lead his evidence at the first instance and thereafter the defendants would have led their evidence. It also goes without saying that if plaintiff would have reserved his right under Order 18 Rule 3(A) of the Code of Civil Procedure, he would have been permitted to lead his evidence in rebuttal as well. However, since the learned trial Court has failed to appreciate the above said factual and legal aspect of the matter before passing the impugned order, it has caused manifest injustice to the petitioners–defendants which can not be sustained, for this reason as well.

During the course of hearing, learned counsel for the respondent–plaintiff could not raise any meaningful argument in support of the impugned order and rightly so it being a matter of record. Thus, the impugned order cannot be sustained, for this reason also.

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 since the impugned order has been found suffering from patent illegality, it cannot be sustained. Accordingly, the impugned order dated 08.02.2016 (Annexure P-1) is hereby set aside, however, only to the extent of offending/operating part thereof whereby the defendants-petitioners were directed to start leading their evidence first.

Resultantly, with the above-said observations made and directions issued, instant revision petition stands allowed, however, with no order as to costs.

03.05.2017
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(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No

Whether Reportable : Yes/No