

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.1427 of 2017

Date of decision: 28.02.2017

Makhan @ Laxman

... Petitioner

Vs.

Smt. Risalo Devi and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Rose Gupta, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK, J. (ORAL)

Feeling aggrieved against the impugned order dated 11.01.2017 passed by the learned trial Court, dismissing the application of the plaintiff for permission to withdraw the suit with liberty to file fresh one, on the same cause of action, plaintiff has approached this Court by way of instant revision petition under Article 227 of the Constitution of India, for setting aside the impugned order.

The facts, necessary for disposal of the present revision petition, are that the petitioner-plaintiff filed his suit for declaration vide plaint dated 15.11.2012 (Annexure P-1). Two written statements were filed. Written statement dated 08.12.2012 (Annexure P-2) was filed on behalf of defendants No.1 to 3, whereas defendants No.4 and 5 filed their separate written statement (Annexure P-3). Specific objections were raised in both the abovesaid written statements on behalf of the defendants that suit of the plaintiff-petitioner was bad on account of mis-joinder of unnecessary parties and non-joinder of necessary parties. It was the specific preliminary objection No.9 raised on

behalf of defendants No.4 and 5 that Smt. Kavita daughter of Babu Ram was a necessary party. In spite of specific objections having been raised in both the abovesaid written statements, plaintiff did not implead Smt. Kavita daughter of Babu Ram as party-defendant, for the reasons best known to him. Issues were framed by the learned trial Court vide Annexure P-4. Thereafter, application under Order 1 Rule 10 of the Code of Civil Procedure ('CPC' for short) was moved by the plaintiff vide Annexure P-5. Replies to this application were filed vide Annexures P-6 and P-7. Said application was dismissed by the learned trial Court vide its order dated 17.11.2016 (Annexure P-8). Against the order dated 17.11.2016, petitioner approached this Court by way of CR No.8511 of 2016, which also came to be dismissed by this Court vide order dated 16.12.2016 (Annexure P-9). Both the parties led and concluded their evidence. The case was listed for final arguments. At this belated stage, petitioner filed the application for permission to withdraw the suit with liberty to file fresh one, on the same cause of action vide Annexure P-10. Replies to this application were filed on behalf of the defendants vide Annexures P-11 and P-12. The application of the plaintiff-petitioner came to be dismissed by the learned trial Court vide impugned order dated 11.01.2017 (Annexure P-13). Hence this revision petition at the hands of the plaintiff.

Placing reliance on the judgments of the Hon'ble Supreme Court as well as this Court in **Vimlesh Kumari Kulshrestha Vs. Sambhajirao and another, (2008) 5 Supreme Court Cases 58, Mandir Baba Siri Chand Samadh Akhara Kashiwala, Amritsar Vs. Karam Singh, 2004 SCC OnLine P&H 337, Raghubir Singh Vs. Harbhajan Singh, (2009) 2 RCR (Civil) 775, Vinod Kumar Vs. Gurmail Singh and another, (2012) 1 RCR (Civil) 539**

and **Ram Sarup Sood Vs. Arunesh Kumar Sood, 2015 SCC OnLine P&H 6350**, learned counsel for the petitioner submits that the learned trial Court misdirected itself, while passing the impugned order. The application for withdrawal of the suit with permission to file fresh one, on the same cause of action, ought to have been allowed by the learned trial Court. Passing of the impugned order has caused manifest injustice to the petitioner. He prays for allowing the present revision petition, by setting aside the impugned order.

Having heard the learned counsel for the petitioner at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that keeping in view the totality of facts and circumstances of the case noticed hereinabove, present one has not been found to be a fit case warranting interference at the hands of this Court, while exercising its revisional jurisdiction. The revision petition is without any merit and the same is liable to be dismissed, for the following more than one reasons.

So far as the judgments relied upon by learned counsel for the petitioner are concerned, there is no dispute about the observations made and law laid down therein. However, on close perusal of the cited judgments, none of them has been found of any help to the petitioner, being distinguishable on facts. It is settled proposition 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."

Once the defendants had made it crystal clear, while filing the written statements at the very inception of the suit that Smt. Kavita daughter of Babu Ram was necessary party, no doubt was left in the mind of anybody, including the petitioner. However, the petitioner did not take appropriate steps at that very stage, either for withdrawing the suit or for impleading Smt. Kavita daughter of Babu Ram as party-defendant. The plaintiff-petitioner produced his evidence. Thereafter, defendants also produced and concluded their evidence.

While dismissing the earlier revision petition filed by the petitioner, bearing CR No.8511 of 2016, vide order dated 16.12.2016 (Annexure P-9), this Court observed as under: -

"4. In the month of September 2016, the application under Order 1 Rule 10 CPC was filed by the plaintiff, seeking to implead Kavita as party defendant in the suit. The suit is already at the stage of rebuttal and arguments. Apparently, the application came to be filed just to over come technical objection with regard to the mis-joinder and non-joinder of necessary parties taken by the defendants.

5. As per the pleadings in the plaint, Kavita was not the party to the alleged oral family settlement which took place between the parties to the suit in the 2nd week of December 2003. Nothing was

claimed against Kavita in the suit. The addition of Kavita as party-defendant would give rise to de novo trial and the same will prejudice the rights of the defendants and would also give rise to multiple proceedings, particularly when both the parties have already completed their evidence and the case is already fixed for rebuttal and arguments. Even otherwise, nothing has been claimed against Kavita in the plaint.

6. *Filing of application after four years of filing of the written statement appears to be an act to overcome the lacuna as claimed by the defendants.*

7. *In view of above, there is no error of jurisdiction committed by the trial Court, nor the order is suffered with any perversity. This revision petition is accordingly dismissed.”*

After passing of the abovesaid order by this Court, petitioner filed the application for permission to withdraw the suit with liberty to file fresh one, on the same cause of action vide application Annexure P-10. During the course of hearing, when specifically and repeatedly asked to give any reasonable explanation and justification for not moving the application for withdrawal of the suit immediately after filing of the written statements, learned counsel for the petitioner had no answer and rightly so, it being a matter of record. Further, a bare perusal of the impugned order would show that the learned trial Court was well within its jurisdiction to pass the impugned order, which has been found based on sound reasons and the same deserves to be upheld.

Reasons recorded by the learned trial Court in paras 8 and 9 of the impugned order, which deserve to be noticed herein, read as under: -

“After going through the case file and hearing the learned counsel for the parties, this Court is of the considered view that the application under consideration merits rejection. By way of filing the present application, the plaintiff-applicant has sought permission to withdraw the present suit with the permission to file the fresh one on the same cause of action on the ground that the present suit may be dismissed for non-joinder of Smt. Kavita daughter of Babu Ram as necessary party to this suit. However, from the perusal of written statement filed by the defendants reveals that the defendants have raised a specific objection that suit of the plaintiff-applicant is bad for non-joinder of Smt. Kavita as party in this case because she is a necessary party. To pass an order of withdrawal of a suit with liberty to file a fresh one, the plaintiff-applicant is required to fulfill two conditions, which are as under: -

(i) The Court must satisfy that suit must fail by reason of formal defect;

(ii) There should be sufficient grounds for allowing the plaintiff-applicant to file a fresh suit on the same subject matter.

Moreover, non-joinder of any necessary party, is not a formal defect, which is material one and the same affect the merits of the case. A formal defect is a defect of form which is prescribed by rules of procedure such as mis-joinder of parties, of cause of action, non-payment of proper Court fee, failing to disclose cause

*of action and so forth. Hence, non-joinder of parties cannot said to be a formal defect. Reliance can be placed in this regard upon the case law cited as **Ram Chander Vs. Jatish Chander 1988 (2) RRR 250.***

*Moreover, the said defect is due to plaintiff-applicant's own fault as the same was pointed out by the defendants in the written statement but the plaintiff being aware of the same, yet he tried to avoid the same. As such, if defects are due to plaintiff's own fault, he cannot be permitted to withdraw the suit with the liberty to file a fresh one on the same cause of action. Reliance can be placed in this regard upon the case law cited as **Rev. Y. Jagan Nath Vs. Amritsar Diocesan Trust Association, Amritsar 2001 (3) CCC 676 (P&H).***

On the basis of above discussion, this Court does not find sufficient ground considering the prayer of the plaintiff to allow him to withdraw the present suit with the permission to file the fresh one on the same cause of action because the alleged defect of non-joinder of Smt. Kavita as necessary party in this suit, has already been pointed out by the defendant-respondents in their written statement and despite that, the plaintiff-applicant continued with the suit. Now, the suit is at its final stage of arguments, therefore the plaintiff cannot be allowed to withdraw his suit with the permission to file the fresh one at this belated stage. Accordingly, the application in hand stand dismissed.”

Learned counsel for the petitioner could not point out any patent

illegality or perversity in the impugned order. It does not appeal to reason as to why the petitioner waited for coming of the suit at final stage. No difficulty, whatsoever, was pointed out on behalf of the petitioner even before this Court, as to why the plaintiff-petitioner could not move the application for withdrawal of the suit with liberty to file fresh one, on the same cause of action, at an earlier point of time, before starting leading his evidence. Conduct of the parties to the litigation and stage of the suit are the two relevant considerations for deciding the application for withdrawal of suit with permission to file fresh one, on the same cause of action. None has been found in favour of the petitioner.

It seems that the petitioner was trying to play smart by misusing the process of law, which cannot be permitted. This Court, while dismissing the earlier revision petition of the petitioner vide order dated 16.12.2016, upholding the order of the learned trial Court, dismissing the application of the petitioner under Order 1 Rule 10 CPC, made it clear that at this belated stage of the suit rights of the defendants will be prejudiced, particularly when both the parties have already completed their evidence and the case was fixed for rebuttal and arguments. Under the circumstances of the case, abovesaid defect would not be covered by the 'formal defect'. Having said that, this Court feels no hesitation to conclude that the learned trial Court committed no error of law, while passing the impugned order and the same deserves to be upheld, for this reason also.

The abovesaid view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court: -

- 1. *Bakhtawar Singh Vs. Sada Kaur, 1997 (1) RCR (Civil) 51.***
- 2. *K.S. Bhoopathy Vs. Kokila, 2000 (5) SCC 458.***
- 3. *Chander and others Vs. Gulzari Lal and others, 1979 RLR 546.***

4. *Narain Dass adopted son Shri Duga Parshad Vs. Om Parkash etc., 1982 CurLJ (CCR) 146.*

5. *Surjan Singh Vs. Amarjit Singh, 1993 (1) PLR 749.*

In fact, petitioner could not give sufficient reasons with a view to enable the learned trial Court or this Court to record satisfaction and reasons for granting permission to withdraw the suit with leave to file fresh on the same cause of action. It is the settled proposition of law that the plaintiff-applicant was under legal obligation to comply with the statutory mandate contained in Order 23 Rule 1 CPC. However, he miserably failed to do so and that too for no good reasons. Under these circumstances, it can be safely concluded that the impugned order is factually correct and legally justified, which deserves to be upheld, for this reason as well.

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 no illegality has been found in the impugned order passed by learned trial Court, the same deserves to be upheld. The revision petition having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground for interference has been made out.

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

[RAMESHWAR SINGH MALIK]
JUDGE

28.02.2017
vishnu

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No