

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

C.R.No. 3048 of 2017

Date of Decision:- 28.04.2017

Subhash

...Petitioner

vs.

State of Haryana and others

...Respondents

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Ms. Poonam Rani, Advocate,
for the petitioner.

DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for quashing of impugned order dated 12.4.2017 (Annexure P-3) passed by the Additional Civil Judge (Junior Division), Fatehabad whereby the application moved by the petitioner under Order 1 Rule 10 CPC for impleading him as necessary party in Civil Suit No.164-CS dated 8.9.2016 has been dismissed.

Briefly the facts of the case, as made out in the present revision petition, are that respondent No.5, namely, Neelam Devi filed a suit for declaration and permanent injunction to the effect that she was elected as Sarpanch of Gram Panchayat, Nehla, Tehsil and District Fatehabad. Respondent No.2 issued show cause notice to respondent No. 4-plaintiff under the provisions of Section 51 (3) read with Section 175(v) of the

Haryana Panchayati Raj Act, 1994 (hereinafter referred to as 'The Act'). On the basis of said notice, an enquiry was conducted by District Development and Panchayat Officer, Fatehabad and respondent No. 4 got interim relief in the civil suit filed by him. During pendency of said suit, respondents No. 3 and 4 i.e. Mukesh and Ashutosh were added as defendants on the application moved under Order 1 Rule 10 CPC by the trial Court. Plaintiff-respondent No. 5 approached this court by way of filing revision petition for quashing of order passed by the Trial Court allowing the application filed under Order 1 Rule 10, CPC which was dismissed on 2.3.2017 on the ground that they were the necessary party. Petitioner also filed an application under Order 1 Rule 10 CPC for impleading him as necessary party in the suit being Ex-Sarpanch and voter of the village on the ground that there was collusion between plaintiff-respondent No.5 and respondents No. 3 and 4. However, said application has been dismissed vide order dated 12.4.2017 which is subject-matter of challenge in the present petition.

Learned counsel for the petitioner submits that the impugned order has been passed without going into the contents of the application and without recording any finding. Plaintiff-respondent No.5 and respondents No. 3 and 4 were in collusion with each other and the suit filed by the plaintiff could be decreed, which could have adversely affected the rights of the petitioner. Learned counsel further submits that learned trial Court has allowed the application filed under Order 1 Rule 10 CPC by respondents No.3 and 4, whereas, the application filed by the petitioner has been dismissed and, as such, different yardsticks have been adopted. The present petitioner is necessary party to be impleaded in the suit and his

interest is likely to be affected. He remained as Sarpanch and being villager also, his participation is required in the suit.

Heard arguments of learned counsel for the petitioner and have also perused the impugned orders as well as other documents available on the file.

Facts relating to filing of suit by plaintiff and allowing of application filed under Order 1 Rule 10 CPC by respondent Nos. 3 and 4 as well as dismissal of application filed by the petitioner are not disputed. It is also not disputed that the order of trial Court allowing the application for impleading of party has not been set aside in **Civil Revision No. 1518 of 2017**.

The application moved by the petitioner has been dismissed on the ground that neither any relief had been claimed nor any complaint had been filed by him against plaintiff regarding the election in dispute. It is also not disputed that respondents No. 3 and 4 also moved an application for impleading them as party in the suit, which was allowed by the trial Court and they were impleaded as defendants No. 3 and 4 in the civil suit. Thereafter, Civil Revision No. 1518 of 2017 was filed before this Court by Neelam Devi which was dismissed vide order dated 2.3.2017 wherein it was stated that nothing was mentioned in the application as well as in the order passed by the trial Court while allowing application moved under Order 1 Rule 10 CPC as to how the petitioner was going to be affected in case defendants No. 3 and 4 were impleaded as party in the suit. Since no relief was claimed against defendants No. 3 and 4 but the enquiry was conducted on the basis of complaint made by defendant No.4 and defendant No.3

contested the election of Sarpanch but lost the same. It was also mentioned that in case the suit is decreed against the petitioner then how defendant No.3 was going to be affected. It cannot be said that defendants No. 3 and 4 are not necessary party and they were not going to be affected in any manner.

In the present case also, the application filed by the petitioner for impleading him as party has been dismissed being not necessary party. For deciding the issue as to whether the applicant is necessary party or not, two requirements are necessary to be fulfilled i.e. (i) there must be a right to some relief against the plaintiff and (ii) no effective decree can be passed in absence of such party. The petitioner has moved application for impleading him as party in the suit on the ground that he is resident, voter as well as Ex-Sarpanch of that village.

On perusal of application and after hearing arguments of learned counsel for the petitioner, it is apparent that neither any relief has been claimed in the suit against the applicant nor any complaint has been made by him against plaintiff regarding the dispute. No doubt, only under the circumstances, when the Court comes to the conclusion that the applicant is necessary party to be impleaded for proper adjudication of the case or some claim has been sought against him. How the petitioner is necessary party in the suit has not been mentioned in the application or during arguments.

The law is well settled and it has been held in various judgments that the plaintiff is sole architect of his plan and he has a right to choose his own adversary against whom he seeks relief. Where there are

no allegations or any cause of action against the applicant, who is sought to be impleaded as defendant in the suit and only on mere apprehension that plaintiff and defendant might be in collusion with each other to get the suit decreed which would adversely affect the right of the applicant or other villagers, is not enough to implead him as defendant in the suit. Even in case any order or decree is passed by the trial Court, it is not going to affect the petitioner in any manner. It has been held by Hon'ble the Apex Court in case **Mumbai International Airport Pvt. Ltd. vs. Regency Convention Centre & Hotels Pvt. Ltd. and others,** 2010 (7) SCC 417 that the plaintiff, being dominus litis, may choose persons against whom he wishes to litigate and the person, who is not a party, has no right to be impleaded against the wishes of plaintiff. The Court, however, under Order 1 Rule 10 (2) CPC has discretion to strike out or add parties at any stage of proceedings but the discretion under sub-rule can be exercised either suo moto or on application of person who is not party to the suit. The Court has been given the discretion to add anyone as a party, or any person who is found to be a necessary or proper party. It is to be seen that in case a necessary person is not impleaded as party, the suit is liable to be dismissed. A proper party is a party who though not a necessary party, is a person whose presence would enable the Court to completely, effectively and adequately adjudicate upon the dispute in the suit. Discretion has also been explained that when it is applied to the Courts of justice, it means sound discretion guided by law. It must be governed by rule and not by humour. It is also observed that it must not be arbitrary, vague and fanciful but legal and regular.

In the present case, nothing has been mentioned in the application as to how the petitioner is necessary party and how he is going to be affected in any manner if he is not impleaded as party.

In view of facts, circumstances and the law position as discussed above, I do not find any reason to interfere with the impugned order and, as such, the revision petition being devoid of any merit is hereby dismissed.

April 28, 2017
poonam

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned **Yes**

Whether Reportable **Yes**