

Civil Revision No. 4852 of 2016 (O&M)

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

**Civil Revision No. 4852 of 2016 (O&M)
Date of decision: 16.1.2017**

The Karan Urban Co-op Bank Limited

... Petitioner

Vs.

Chander Kumar and others

... Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Sawan Chaudhary, Advocate and
Mr. Abhinav Sood, Advocate
for the petitioner.

None for the respondents.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned order dated 12.7.2016 (Annexure P-4) passed by the learned trial court, petitioner has approached this Court by way of present revision petition under Article 227 of the Constitution of India.

Notice of motion was issued.

As per office report dated 16.8.2016, service is complete. However, when nobody appeared on behalf of the respondents despite service, they were proceeded ex parte, vide order dated 17.8.2016. Nobody

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has come present on behalf of the respondents even today to oppose the present revision petition. It seems that respondents are not interested in pursuing the present revision petition.

Heard learned counsel for the petitioner.

A combined reading of application moved by the petitioner under Order 1 Rule 10 read with Section 151 of the Code of Civil Procedure, seeking impleadment as party-defendant No.3 in the suit and the impugned order dated 12.7.2016 (Annexure P-4) would make it crystal clear that learned trial court failed to exercise its jurisdiction, while passing the impugned order which has not been found to be a speaking and reasoned order.

It has gone undisputed before this Court that husband of defendant No.2 had, as a matter of fact, mortgaged the suit property with the petitioner-Bank. Defendant No.2 stood guarantor for repayment of the loan taken by her husband namely Sh. Satvinder Singh. Mortgage deed was executed between the parties. Loanee-Sh. Satvinder Singh, husband of defendant No.2, failed to repay the loan. When the applicant-Bank, approached husband of respondent No.2 for repayment of loan, the matter was settled between the parties and husband of defendant No.2 agreed to pay an amount of ₹5, 25,000/- by way of cheque. However, the said cheque was dishonoured and the petitioner-Bank had to move a complaint under Section 138 of the Negotiable Instruments Act, 1881, which was decided by learned trial court, directing the accused to pay an amount of ₹10,50,000/-.

When the applicant-petitioner Bank came to know about the suit for declaration with consequential relief of permanent injunction, filed by the plaintiffs against respondent No.2, it was necessitated to move an

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application under Order 1 Rule 10 CPC for impleadment as party-defendant. Since learned trial court failed to appreciate the abovesaid undisputed fact situation obtaining on record in the correct perspective, while passing the impugned order, the same cannot be upheld. Sufficient opportunities have been granted to the respondents to oppose the present revision petition, however, nobody has come present on their behalf, despite having been duly served.

No doubt, plaintiff, being the master of a lis, cannot be forced to contest against any added party, unless a case is made out against the plaintiff on behalf of the applicant, seeking impleadment as party-defendant. However, in the present case, abovesaid material aspect of the matter would speak volumes in favour of the applicant-petitioner, showing its positive interest in the litigation. In such a situation, it can be safely concluded that applicant-petitioner was a necessary party and ought to have been impleaded as party-defendant by learned trial court. Since learned trial court has failed to appreciate that applicant-petitioner was a necessary party having substantial interest in the litigation, while passing the impugned order, the same cannot be upheld, for this reasons 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 to be suffering from patent illegality, being a non speaking order, the same cannot be sustained.

Accordingly, impugned order dated 12.7.2016 (Annexure P-4) passed by learned trial court is hereby set aside. Application of the

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petitioner moved under Order 1 Rule 10 CPC is hereby allowed and it is ordered to be impleaded as party-defendant in the suit filed by the plaintiff-respondent.

Learned trial court is directed to proceed further with the matter for its early decision, granting due opportunities to both the parties to lead their respective evidence, in accordance with law.

With the abovesaid observations made and directions issued, present revision petition stands allowed, however, with no order as to costs.

16.1.2017
AK Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No