

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

CR No.478 of 2017.

Date of Decision: 24.01.2017.

Sandeep Sachdeva

....Petitioner.

VERSUS

Smt. Bhagwati Devi

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Sanjay Vij, Advocate for the petitioner.

SNEH PRASHAR, J.

The instant revision petition has been filed under Article 227 of the Constitution of India for quashing the order dated 09.01.2017 passed by learned Civil Judge (Junior Division), Gurgaon whereby the application for impleading the transferee pendente-lite as party-defendant, was dismissed and simultaneously the evidence of the petitioner was closed by court order.

The relevant facts, as they emerge from the impugned order, are that a suit for declaration with consequential relief of permanent injunction was filed by the respondent-plaintiff against the petitioner. As the suit was contested by the petitioner, issues were framed and the parties were called upon to adduce evidence in support of their rival contentions. The respondent-plaintiff closed her evidence on 05.11.2016 after which the case was adjourned for evidence of the petitioner and was posted to 16.11.2016.

No evidence was led by the petitioner on the date fixed. He availed two more opportunities for his evidence and ultimately on 21.12.2016 he filed

an application for impleading his brother Amit Sachdeva as party-defendant No.2 to the suit. Finding that the application had been filed with a mala fide intention, learned trial Court dismissed the application imposing cost of Rs.3,000/-. The cost was ordered to be deposited with D.L.S.A., Gurgaon. A separate order of even date i.e. 09.01.2017 was passed closing the evidence of the petitioner-defendant as well.

The submissions made by Mr. Sanjay Vij, learned counsel for the petitioner have been considered.

Learned counsel for the petitioner submits that the petitioner may have transferred his ownership rights in the suit property in favour of his brother during pendency of the suit, but the fact remains that by virtue of transfer, the transferee has become the owner and therefore impleadment of the transferee is necessary for proper and complete adjudication of the case. To support his argument, he relied upon **Thomson Press (India) Ltd. vs. Nanak Builders and Investors (P) Ltd., 2013 (2) RCR (Civil) 875.**

The case in hand is on completely different footing. As already observed above, the petitioner-defendant after availing three opportunities for adducing evidence had come up with an application that by virtue of a transfer deed dated 19.12.2016 registered with Sub Registrar, Gurgaon he had transferred his rights in the suit property in favour of his brother, therefore he be impleaded as defendant No.2 to the case. Learned trial Court rightly observed that the transfer deed had been executed with a mala fide intention to prolong the trial. It was also noticed that in the transfer deed there was no mention of the civil suit, pending with regard to the property in question. Apart from the fact that principle of lis-pendence will apply to the

let the case linger on due to such intentional mala fide conduct of a party. Thus, finding no illegality or perversity in the order dated 09.01.2017 vide which the application of the petitioner for impleading his brother, being a transferee, was dismissed, the instant petition being devoid of merit to that extent is also dismissed.

Coming to the second submission of counsel for the petitioner, his grievance appears to be justified that his evidence was closed by virtue of a separate order passed by learned trial Court on the day his application for impleading his brother/ transferee as party to the suit was dismissed. Perusal of the orders of learned trial Court reproduced in the instant petition indicate that on 05.12.2016, on an application filed by the petitioner, one more but last opportunity for his evidence was allowed and the case was adjourned to 21.12.2016. On the date fixed i.e. 21.12.2016, the petitioner filed an application for impleading his brother being transferee pendente-lite of the property in question. The case was adjourned to 04.01.2017 for filing reply to the application. After the reply was filed, the case was adjourned to 07.01.2017 for arguments. The arguments of counsel for the parties were heard and the case was adjourned to 09.01.2017 for pronouncement of order on the application. It is clear that the case was not fixed for evidence of the petitioner-defendant on 09.01.2017. As such, closure of evidence of the petitioner-defendant by learned trial Court on the said date i.e. 09.01.2017 was not justified.

In the above premise, the order of learned trial Court closing the evidence of the petitioner-defendant by order is set aside. One effective opportunity be given to the petitioner to produce his entire remaining evidence. As it is submitted by learned counsel that the petitioner is

suffering from Cancer and it may happen that on the date fixed by learned trial Court he is seriously ill or is hospitalized, learned trial Court be directed to give one more opportunity in that eventuality. In case, on the date fixed by learned trial Court relevant medical document indicating illness or hospitalization of the petitioner-defendant is filed before learned trial Court, it shall be at liberty to adjourn the case to another effective date on which the petitioner can appear for his statement.

The petition is disposed of accordingly.

(SNEH PRASHAR)
JUDGE

24.01.2017.
jitender sharma

Whether speaking/ reasoned : **Yes/ No**

Whether Reportable : **Yes/ No**