

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

227

CR No.5044 of 2014

Decided on : 03.08.2017

Rajiv Kataria

... Petitioner

Versus

Raman Sharma and another

.. Respondents

CORAM : HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present : Mr.Arun Jain, Sr.Advocate
Mr.Sunil Sharma, Advocate
for the petitioner.
None for respondent No.1.
Mr.Davinder Dhillon, Advocate for
Mr.P.S.Dhaliwal, advocate for respondent No.2.

Rameshwar Singh Malik, J. (Oral)

Aggrieved against the order dated 16.07.2014 (Annexure P-6) whereby plaintiff was permitted to lead his evidence beyond the scope of order dated 24.09.2013 (Annexure P-3) passed by this Court in Civil Revision No.5782 of 2013 (*Rajiv Kataria Vs. Raman Kumar Sharma and another*), defendant has approached this Court by way of instant civil revision petition under Article 227 of the Constitution of India, for setting aside the impugned order.

Notice of motion was issued and in the meantime, operation of the impugned order was stayed.

Heard learned counsel for the parties.

The short issue involved in the instant Civil Revision revolves around the scope of order dated 24.09.2013 (Annexure P/3) passed by this Court and the operative part thereof reads as under:-

“Accordingly, the instant revision petition is allowed.

Trial Court is directed to grant only one more effective opportunity to the petitioner for cross-examination of aforesaid three witnesses of the plaintiff namely Raman Kumar Sharma (plaintiff himself).”

It has gone un-disputed before this Court that the above said order passed by this Court was not challenged by the plaintiff nor he filed any application for its recalling or review. In compliance of the above said directions issued by this Court, the defendant was permitted by the learned trial court to cross-examine three witnesses of the plaintiff. Order of this Court would be completely satisfied and would stand complied with, the moment defendant completed his cross-examination of three witnesses of the plaintiff.

However, while completely mis-understanding and mis-interpreting the true import of above said order dated 24.09.2013 passed by this Court, the learned trial court permitted the plaintiff-respondent to lead more evidence, for which there was no scope whatsoever. It is so said because neither the plaintiff challenged the above said order passed by this Court nor he had reserved his right under Order 18 Rule 3 of the Code of Civil Procedure (in short 'CPC'). Having said that, this Court is of the considered opinion that learned trial court has exceeded its jurisdiction by passing the impugned order and the same cannot be sustained.

It goes without saying that initial onus would always be on the plaintiff to prove his pleaded case. Plaintiff is always supposed to be vigilant while leading his evidence in affirmative. As and when the plaintiff thinks that he would be required to lead some evidence in

rebuttal, law has provided that opportunity for the plaintiff, but he has to be vigilant for reserving his right under Order 18 Rule 3, CPC. In the instant case, the plaintiff failed to exercise his right under Order 18 Rule 3 CPC.

In view of the above said facts and circumstances of the case, it can be safely concluded that there was no scope whatsoever for the learned trial court to allow the plaintiff to restart leading his evidence. In case, the plaintiff was feeling aggrieved against the above said order dated 24.09.2013 passed by this Court, he was at liberty to seek his appropriate remedy in accordance with law, but he did not do so for the reasons best known to him. Once above-said order dated 24.09.2013 passed by this Court has attained finality between the parties, it was to be complied with by the learned trial court in its strict sense. Since the learned trial court completely mis-understood the scope of above said order passed by this Court while passing the impugned order, it cannot be sustained for this reason also.

During the course of hearing, learned counsel for the respondent-plaintiff could not address any meaningful argument in support of the impugned order. Further, learned trial court has incorrectly recorded that no prejudice was likely to be caused to the defendant if the plaintiff was allowed to lead his further evidence. Once the plaintiff himself has closed his evidence by making his statement on 13.12.2012, learned trial court could not have granted any further opportunity to the plaintiff to start leading his evidence in affirmative again, and that too under the garb of the above said order dated 24.09.2013 passed by this

Court.

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 16.07.2014 (Annexure P-6) passed by the learned trial court is hereby set aside.

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

[Rameshwar Singh Malik]
Judge

03.08.2017
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Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No