

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

C.R. No.6083 of 2015 (O&M)

Date of Decision: 23.01.2017

Rattan Lal and others

....Petitioners

Versus

Dhanuk Dhari

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Samir Rathaur, Advocate
for the petitioners.

Mr. Ajay Bishnoi, Advocate
for Mr. A.P.S. Rana, Advocate
for the respondent.

DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside order dated 07.09.2015 passed by the District Judge, Chandigarh (Annexure P-1), whereby, the application filed by the petitioners under Section 24 of CPC has been dismissed.

Briefly, the facts of the case are that the plaintiff-respondent filed a suit for permanent injunction against the petitioners. The said Civil Suit was dismissed by the Civil Judge, Junior Division, Chandigarh vide judgment dated 05.10.2010. The respondent preferred an appeal against the said judgment dated 05.10.2010 before the Additional District Judge, Chandigarh. However, vide judgment dated 01.05.2014, the matter was remanded to the trial Court after framing some additional issues with a

direction to re-consider and give findings on all the issues afresh. Said suit was again decided by the trial Court vide judgment dated 24.09.2014 and suit of the plaintiff-respondent was partly decreed. The petitioners, again being aggrieved by the judgment of the trial Court, filed an appeal, which was decided by the Additional District Judge, Chandigarh and the judgment and decree dated 24.09.2014 passed by the Civil Judge (Junior Division) was set aside. The matter was again remanded to the trial Court for its decision afresh in compliance of directions issued vide judgment dated 01.05.2014. After remand, the trial Court made a reference to the District Judge, Chandigarh requesting him to transfer the matter to some other Court of competent jurisdiction on the ground that it would be prudent to decide those issues again by some Court of equal jurisdiction as mind has already been applied while deciding the said issues at first instance. Still, the District Judge, did not transfer the suit to any other Court. Thereafter, the petitioners filed an application under Section 24 of the Code of Civil Procedure before the District Judge, Chandigarh seeking transfer of the case from the Court of Civil Judge (Junior Division), Chandigarh (Sh. Karanvir Singh Maju) to any other Court of competent jurisdiction. The District Judge, Chandigarh vide impugned order dated 07.09.2015 dismissed the said application, which has been challenged in the present petition by raising various grounds.

Learned counsel for the petitioners submits that the impugned order has been passed in spite of the fact that the trial Court has already given its mind on the issues and accordingly, it is not in the interest of justice and equity not to transfer the suit. Learned counsel also submits that even the trial Court itself has expressed its reservation in adjudicating the

suit afresh on the ground that all the issues have already been decided. The civil suit should have been transferred to some other Court of competent jurisdiction. At the end, learned counsel for the petitioners submits that the impugned order is totally non-speaking and no reason, whatsoever, for rejection of application of the petitioners have been mentioned. Learned counsel for the petitioners also submits that the petitioners would suffer irreparable loss and it would result in gross abuse of the process of law.

Learned counsel for the respondent has fairly submitted that he has no serious objection in transferring the case to some other Court of competent jurisdiction.

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

The facts are not disputed. Undisputedly, initially the Civil Suit was decided by the Civil Court on 05.10.2010, which was challenged in the appeal and the case was remanded to the trial Court. On remand, the suit was partly decreed by the Court of Sh. Karanvir Singh Maju, Civil Judge, Junior Division, Chandigarh on 24.09.2014. Thereafter, the said judgment dated 24.09.2014 was assailed in appeal and the same was again remanded back to the trial Court. Learned Presiding Officer himself made a reference to the District Judge for transfer of the case as he has already given its mind on all the issues but still the application moved by the petitioners has been dismissed. Moreover, learned counsel for the respondent has no objection if the case is transferred to some other Court of competent jurisdiction. Once, the trial Court had given its mind on the subject matter of the suit at the first instance, therefore, it would be in the interest of justice and equity to

transfer the suit to some other Court of competent jurisdiction for just and fair adjudication of the matter.

Hon'ble the Apex Court in *M/s Kranti Associates Private Limited and another vs Sh. Masood Ahmed Khan and others 2010(4) RCR (Civil) 600*, while adjudicating upon the aspect of recording of reasons in the orders passed by Judicial, Quasi Judicial and Administrative Authorities has held as under :-

“51. Summarizing the above discussion, this Court holds :

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior Courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver

them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harvard Law Review 731-737).

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya v. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions."

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process."

(vii) That it would be in the interest of justice, equity and fair play to set aside the impugned order (Annexure P-1) and to allow the application under Section 24 of the Code of

Civil Procedure filed by the petitioners.

(viii) That the petitioners humbly crave for the kind indulgence of this Hon'ble Court to take such more/further pleas as may be available to them at the time of hearing or during the course of the proceedings of this petition.”

In view of the facts as mentioned above and having no objection from the other side, the present petition is allowed and the impugned order dated 07.09.2015 (Annexure P-1) passed by the District Judge, Chandigarh is hereby set aside.

However, the District and Sessions Judge, Chandigarh is directed to consider the application afresh and transfer the case to other competent Court having jurisdiction in the interest of justice. The necessary exercise be done within a period of 15 days from the date of receipt of certified copy of this order. The parties are directed to be present before the competent Court of jurisdiction on 02.03.2017 as nominated by the District and Sessions Judge, Chandigarh.

(DAYA CHAUDHARY)
JUDGE

23.01.2017
gupreet

Whether speaking/reasoned Yes

Whether Reportable Yes