

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

CR No.6935 of 2015

Date of Decision:10.03.2017

Vikas Jain

.....PETITIONER

Vs.

Municipal Committee, Rohtak and others

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.C.B.Goel, Advocate for the petitioner.

Mr.S.K. Mahajan, Advocate for respondent No.1.

Mr.Jagdish Manchanda, Advocate for respondents No. 4 to 7.

RAMESHWAR SINGH MALIK J. (ORAL)

Instant revision petition, at the hands of plaintiff, filed under Article 227 of the Constitution of India, is directed against the order dated 22.07.2015 passed by learned Addl. District Judge, Rohtak (Annexure P-3), whereby appeal filed by the petitioner under order 43 Rule 1 of the Code of Civil Procedure ('CPC' for short), against an order dated 27.05.2013 passed by the trial Court, dismissing the application of the plaintiff for restoration of his suit, which was dismissed in default, was dismissed as not maintainable.

Notice of motion was issued.

Heard learned counsel for the parties.

It is a matter of record and not in dispute that the order dated 27.05.2013 (Annexure P-2) was passed by the learned trial Court, whereby the application of the petitioner-plaintiff, seeking restoration of his suit was dismissed. It has also gone undisputed before this Court that against the order dated 27.05.2013 (Annexure P-2) passed by the learned trial Court, only an appeal was maintainable under Order 43 Rule 1 (c) of the Code of Civil

Procedure. It is also a matter of record that the petitioner filed his appeal under Order 43 Rule 1 (c) which came to be dismissed by learned Additional District Judge, as not maintainable, while passing the order dated 22.07.2015.

A bare perusal of the impugned order passed by the learned Addl. District Judge would make it crystal clear that he failed to appreciate true import of the provisions of Order 43 Rule 1 (c) of CPC, before passing the impugned order. In fact, learned Additional District Judge failed to exercise his jurisdiction, for deciding the appeal on merits, because the appeal was maintainable. Dismissing the appeal, learned Appellate Court has proceeded on a misconceived approach, while treating the appeal as not maintainable.

The approach adopted by the learned Additional District Judge was patently illegal and the impugned order has been found running contrary to the provisions of law contained in Order 43 Rule 1(c). Having said that, this Court feels no hesitation to conclude that since the impugned order has been found suffering from patent illegality, the same cannot be upheld. When confronted with the above said factual as well as legal aspect of the matter, learned counsel for the respondents had no answer and rightly so, it being a matter of record.

Under the undisputed facts and circumstance of the case, it can safely be concluded that since the learned first appellate court could not appreciate the factual as well as legal aspect of the matter, in the correct perspective, while passing the impugned order, the same cannot be sustained.

No other arguments 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 the impugned order being patently illegal order, it cannot be sustained.

Accordingly, impugned order dated 22.07.2015 passed by learned Additional

District Judge (Annexure P-3) is set aside. Revision petition deserves to be accepted.

Consequently, after setting aside the order dated 22.07.2015 (Annexure P-3), the matter is remitted back to the learned Additional District Judge, Rohtak for fresh decision on merits. Learned District Judge, Rohtak, is directed either to decide the appeal himself or assign the same to learned Court of competent jurisdiction for its early decision on merits, in accordance with law.

The parties are directed to appear before the learned District Judge on 06.04.2017.

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

(RAMESHWAR SINGH MALIK)
JUDGE

10.03.2017

Anjal

Whether speaking/reasoned? Yes/No

Whether reportable? Yes/No