

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CR No.7017 of 2016
Date of decision:27.2.2017

Mehanga Singh

...Petitioner

Versus

Tejinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Vijay Sharma, Advocate for the petitioner.
Mr.Arihant Jain, Advocate for the respondent.

RAMESHWAR SINGH MALIK, J. (Oral)

Present revision petition is directed against the order dated 21.9.2016 passed by the learned Additional District Judge, whereby application of the petitioner moved under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure for amendment of his written statement, during the pendency of his first appeal, was declined.

Notice of motion was issued and in the meantime, disposal of the appeal by the learned first appellate court was stayed.

Heard learned counsel for the parties.

It has gone undisputed before this Court that one of the material aspects of the matter was that whether the defendant-petitioner used to sell his agriculture produce through commission agency which used to be run by Shri Swaran Singh, son of the plaintiff-respondent herein. It is also not in dispute that the facts which the petitioner wants to include in his pleadings by way of amendment in his written statement are based on official record, coming from proper custody of government department. Having said that,

this Court feels no hesitation to conclude that the learned Additional District Judge failed to appreciate the above-said crucial aspect of the matter, while passing the impugned order which has caused manifest injustice to the petitioner.

Another fact which the petitioner wants to include in his pleadings by way of amendment that the area allegedly intended to be sold by the petitioner was not the vacant land, as pleaded by the plaintiff-respondent but it was his residential house and there was a 'Dargah of Peer Laala Wale' However, since the learned Additional District Judge did not consider these material aspects of the matter in correct perspective, while passing the impugned order, the same cannot be upheld for this reason also.

It is the settled principle of law that rules of procedure are meant for advancing the cause of justice. Further, every court of law must make an endeavour to grant reasonable opportunities to the parties to the litigation to put up their best case before the court. No party should be forced to go home with the grievance that it was not granted due opportunity to put up its case before the Court.

Keeping in view the peculiar facts and circumstances of the case in hand, discussed hereinabove, this Court is of the considered opinion that it was a fit case where the learned first appellate court ought to have allowed the application of the petitioner for amending his written statement to the extent indicated above, with a view to do complete and substantial justice between the parties. Under these circumstances, it can be safely concluded that the impugned order has caused manifest injustice to the petitioner and the same cannot be upheld, for this reason as well.

During the course of hearing, learned counsel for the

respondent-plaintiff could not support the impugned order, by raising any meaningful argument and rightly so, it being a matter of record.

So far as the judgments relied upon by the learned counsel for the respondent in **J.Samuel and others Vs. Gattu Mahesh and others, 2012 (2) SCC 300, Jaswant Kaur and another Vs. Subhash Paliwal and others, 2010 (2) SCC 124, Vidyabai and others Vs. Padamlatha and another, 2009 (1) RCR (Civil) 763 and Ajendraprasadji N. Pande and another Vs. Swami Keshavprakeshdasji N. and others, 2007(1) RCR (Civil) 481** are concerned, there is no dispute about the law laid down therein. However, on close perusal of the cited judgments, none of them has been found to be of any help to the respondent, being clearly distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmasundara Rao (Dead) Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533.**

With a view to avoid repetition and also for the sake of brevity, the observations made by the Hon'ble Supreme Court in para 11 and 12 of its later judgment in **Ganeshi Lal's case** (supra), reiterating its view taken in **Amrit Lal Manchanda's case** (supra) and **Mohd. Illiyas's case** (supra), which can be gainfully followed in the present case, read as under:-

11. "12....Reliance on the decision without looking into

the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law

but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides.

*Coming to the peculiar fact situation obtaining on record of the present case, it is unhesitatingly held that learned Permanent Lok Adalat discussed, considered and appreciated each and every relevant aspect of the matter, before passing the impugned award. The only endeavour made by the learned Permanent Lok Adalat was to do complete and substantial justice between the parties and this approach adopted by learned Permanent Lok Adalat has been found well justified on facts as well as in law. **Ed.** See State of Orissa Vs. Mohd. Illiyas, (2006) 1 SCC 275 at p.282, para 12.*

12. 15....Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as

though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

16. *In Home Office v. Dorset Yacht Co.* (1970 (2) All ER 294) Lord Reid said (at All ER p.297g-h), "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." *Megarry, J in Shepherd Homes Ltd. V. Sandham* (No.2) (1971) 1 WLR 1062 observed: (All ER p. 1274d-e) "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in *Herrington v. British Railways Board* (1972 (2) WLR 537) Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

17. *Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.*

15. *The following words of Lord Denning in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT, AIR 1962 SC 680*

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide

cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it Ed. See Union of India VS. Amrit Lal Manchanda, (2004) 3 SCC 75, pp. 83-84, paras 15-18."

Reverting to the facts of case in hand, it is held that despite exercise of due diligence, at the hands of the defendant-petitioner, he was unable to bring the above-said facts on record by taking appropriate averments in his written statement. In this view of the matter, petitioner cannot be said to be at fault in this regard and he was entitled for an opportunity to file his amended written statement so as to put up his best case before the court. Further, this Court is of the considered view that in the peculiar fact situation of the instant case, allowing the amendment sought by the petitioner in his written statement will also facilitate the learned Court below to arrive at a judicious conclusion, without causing any prejudice to the rights of the plaintiff-respondent herein.

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 been found suffering from

patent illegality, the same cannot be sustained.

Accordingly, the impugned order is hereby set aside. The application of the petitioner under Order 6 Rule 17 read with Section 151 of Code of Civil Procedure, seeking amendment in the written statement, would stand allowed.

Resultantly, with the above-said observations made, the present civil revision petition stands allowed, however, with no order as to costs.

27.2.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No