

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.6802 of 2017 (O&M)
Date of decision: 03.10.2017

Avtar Singh

... Petitioner

Vs.

Lakhbir Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Abhimanyu Kalsy, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK, J. (ORAL)

Feeling aggrieved against the order dated 21.09.2017 passed by the learned trial Court, whereby application moved by the plaintiff-petitioner under Section 75 and Order XXVI Rule 9 of the Code of Civil Procedure ('CPC' for short) for appointment of Local Commissioner, was dismissed, he 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.

Heard learned counsel for the petitioner.

Petitioner is plaintiff in a suit for permanent injunction. In his suit for permanent injunction, plaintiff-petitioner also filed an application under Order 39 Rules 1 and 2 CPC seeking ad-interim injunction, wherein order dated 27.07.2013 was passed by the learned trial Court, directing the petitioner to maintain status quo. It has also come on record that alleging violation of the status quo order dated 27.07.2013, plaintiff-petitioner moved

an application under Order 39 Rule 2A CPC before the learned trial Court, however, same came to be dismissed by the learned trial Court vide its order dated 30.03.2015.

The learned trial Court, while passing its order dated 30.03.2015 dismissing the application of the plaintiff under Order 39 Rule 2A CPC, also observed that in case the plaintiff was alleging violation of the status quo order dated 27.07.2013 at the hands of defendants, by raising construction of a wall at the site, plaintiff ought to have moved an application before the learned trial Court seeking appointment of Local Commissioner, so as to ascertain the changed position at the site. It was also observed that since the petitioner did not make any effort to get a Local Commissioner appointed for ascertaining factual position at the site as on 27.07.2013, when status quo order was passed by the learned trial Court, his allegation levelled against the defendants for violating the status quo order dated 27.07.2013 was found without any substance and accordingly, his application under Order 39 Rule 2A CPC was dismissed vide order dated 30.03.2015.

In spite of abovesaid observations made by the learned trial Court in its order dated 30.03.2015, petitioner-plaintiff kept on sleeping and did nothing in this regard. He started leading his evidence in affirmative and concluded the same on his own. Thereafter, defendants' evidence has started and it is going on for quite some time, as observed by the learned trial Court in the impugned order. Learned counsel for the petitioner has also conceded this much that one DW has already been partly examined by the defendants. At this belated stage, plaintiff-petitioner woken up from his slumber and moved the application under Order 26 Rule 9 CPC seeking appointment of a

Local Commissioner, contending that such an application can be moved at any stage of the suit. In support of his contentions, learned counsel for the petitioner has also placed reliance on the following judgments: -

1. ***Haryana Wakf Board Vs. Shanti Sarup and others, 2008 (8) SCC 671 (SC).***
2. ***Shaik Zareena Kasam Vs. Patan Sadab Khan and others, 2011 (6) RCR (Civil) 2155 (Andhra Pradesh).***
3. ***J. Satyasri Rambabu Vs. Smt. A. Anasuya and another, 2005 AIR (A.P.) 529 (Andhra Pradesh).***
4. ***K. Dayanand and another Vs. P. Sampath Kumar, 2015 (sup) CivCC 450 (Telangana and Andhra Pradesh).***

So far as the observations made in the abovesaid cited judgments are concerned, there is no dispute about the same. However, on close perusal of the cited judgments, none of them has been found of any help to the petitioner, being distinguishable on facts. It is settled proposition of law that peculiar facts and circumstances of each case are to be examined, considered and appreciated first before applying any codified or judgemade law thereto. Sometimes, difference of even one additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausund Rao and another 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 earlier 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."

When the learned trial Court made its very pertinent observations in its order dated 30.03.2015 and the petitioner still kept on sleeping over his right, if any, for a totally unexplained and long period of more than two and half years, he cannot be heard to say that delay alone should not have been made the basis for dismissal of his application for appointment of Local Commissioner. In fact, reading of the impugned order will make it crystal clear that delay alone was not made the basis for dismissal of the application moved by the petitioner. It is so said because after passing the order dated 30.03.2015 by the learned trial Court, petitioner started leading his evidence and concluded the same on his own. He did not feel it necessary to get the Local Commissioner appointed, so as to ascertain the factual position at the site. Once the plaintiff has chosen this course of action and concluded his evidence without raising any kind of protest in this regard, his application at this highly belated stage was not at all maintainable and the same has been rightly dismissed by the learned trial Court, while passing the impugned order, which deserves to be upheld, for this reason also.

Further, it was not difficult for the plaintiff-petitioner to prove the fact, by producing other relevant evidence, that the defendants have, as a matter of fact, raised some construction during pendency of the suit. It is the settled proposition of law that either of the parties cannot be permitted to seek assistance of the Court for the purpose of collecting the evidence in support of its pleaded case. It is neither the job nor the jurisdiction of the Court to collect the evidence for either of the parties. That is what was sought by the petitioner

by moving his application under Order 26 Rule 9 CPC during the course of evidence of the defendants. Under these undisputed circumstances of the case, it can be safely concluded that the learned trial Court has not committed any error of law, while passing the impugned order and the same deserves to be upheld, for this reason as well.

During the course of hearing, learned counsel for the petitioner could not point out any patent illegality or perversity in the impugned order, which may warrant interference at the hands of this Court, while exercising its revisional jurisdiction under Article 227 of the Constitution of India. In fact, the impugned order passed by the learned trial Court has been found based on sound reasons and the same deserves to be upheld.

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 no illegality or perversity has been found in the impugned order, the same deserves to be upheld. The revision petition having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground for interference has been made out.

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

[RAMESHWAR SINGH MALIK]
JUDGE

03.10.2017
vishnu

Whether speaking/reasoned Yes/No

Whether reportable Yes/No