

CR No. 8021 of 2015(O&M)
CR No. 8315 of 2015 (O&M)

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

CR No 8021 of 2015 (O&M)
Date of Decision: 2.8.2017

M/s PMK Alloys Pvt. Ltd. and others

.....Petitioners

Vs.

Mohd. Tariq and others

.....Respondents

CR No. 8315 of 2015 (O&M)

M/s PMK Alloys Pvt. Ltd. and others

.....Petitioners

Vs.

Mohd. Tariq and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Rashpinder Singh, Advocate for
Mr. S.S. Behl, Advocate
for the petitioners.

Mr.Parvez Akhtar, Advocate for
Mr. Mohd. Yousaf, Advocate
for respondents No.1 to 5.

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RAMESHWAR SINGH MALIK J. (ORAL)

These two identical civil revision petitions, filed at the hands of plaintiffs, are being decided together with the consent of learned counsel for the parties, vide this common order, as both these revision petitions are arising out of similar set of facts. However, for the facility of reference, facts are being culled out from CR No. 8021 of 2015.

The learned trial court passed two orders of even date, i.e. 24.9.2015. Vide order under challenge in CR No. 8021 of 2015, application moved by defendant No. 10 under Order VII Rule 11 of the Code of Civil Procedure ('CPC' for short) was allowed, directing the plaintiffs to pay ad valorem court fee. In the second case, i.e. CR No. 8315 of 2015, plaintiffs moved an application under Order XII Rule 6 CPC, for decreeing the suit on the basis of admission made by defendants No. 6 to 9, however, the application was declined by the learned trial court. Hence these two revision petitions at the hands of plaintiffs.

Notice of motion was issued.

Heard learned counsel for the parties.

A bare combined reading of both the impugned orders passed by the learned trial court will make it crystal clear that so far as order dated 24.9.2015 (Annexure P-1) passed in CR No. 8315 of 2015, dismissing the application of the plaintiffs moved under Order XII Rule 6 CPC, is concerned, the same was rightly passed by the learned trial court and it deserves to be upheld. It is so said because all the defendants were not admitting the claim of plaintiffs. It was a matter of record defendant No.10 had moved an application under Order VII Rule 11 CPC, which would show that some of the defendants were contesting the suit. In this view of the

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matter, no fault can be found with the impugned order passed by the learned trial court and the same deserves to be upheld.

However, learned trial court proceeded on a complete misreading of true facts of the case as well as relevant provisions of law, while passing the impugned order dated 24.9.2015 (Annexure P-1) in CR No. 8021 of 2015. Vide this impugned order, learned trial court illegally directed the plaintiffs to pay ad valorem court fee, in spite of the fact that plaintiffs have filed the suit for declaration and for consequential relief of mandatory injunction. Since the plaintiffs were claiming themselves to be in settled possession over the suit land and they did not seek any consequential relief of possession, they were not liable to pay ad valorem court fee. However, since the learned trial court miserably failed to appreciate this material aspect of the matter, while passing the impugned order, it cannot be sustained.

It is pertinent to note here that this fact has come on record that no consideration exchanged hands between the parties, as per statements suffered by defendants No. 8, 9 and 10. It were defendants No. 1 to 5, who appointed defendants No. 6 and 7 as Directors of the Company in a clandestine manner. Thereafter, defendants No. 6 and 7 sold the property to defendants No. 8 and 9 without any consideration. Once defendant No. 10 was also party to this questionable transaction, which is the subject matter before the learned trial court in on going civil suit for declaration, defendant No.10 was not even competent to move the application under Order VII Rule 11 CPC. Since defendant No.10 was trying to take undue benefit of his own wrong, while trying to play smart and the learned trial court could not appreciate this crucial aspect of the matter, while passing the impugned

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order, it cannot be sustained.

Since the plaintiffs were claiming themselves to be in possession as owners of the suit property, they did not seek any consequential relief of possession. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned trial court exceeded its jurisdiction in passing the impugned order and the same cannot be sustained, for this reasons also.

The view that has been taken by this Court also finds support from the judgment of this Court in **Bharpoor Singh and another Vs. Lachhman Singh, 2017 (1) Law Herald 609.**

During the course of hearing, learned counsel for the respondents-defendants could not raise any meaningful argument in support of the impugned order and rightly so, because no such argument was available to him. Since the learned court below could not appreciate the law laid down by this Court in the abovesaid judgment, it cannot be sustained for this reason, as well.

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 order dated 24.9.2015 (Annexure P-1) passed by the learned trial court dismissing the application under Order XII Rule 6 CPC has been found to be factually correct and legally justified order, the same is upheld and Civil Revision No. 8315 of 2015 is dismissed.

So far as order dated 24.9.2015 (Annexure P-1) passed by the learned trial court allowing application of defendant No.10 under Order VII Rule 11 CPC, is concerned, it has been found to be a patently illegal order

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and the same cannot be sustained. Accordingly, impugned order dated 24.9.2015 (Annexure P-1) in CR No. 8021 of 2015 is hereby set aside. The learned trial court is directed to proceed further with the matter and decide the same at an early date, in accordance with law.

Resultantly, with the abovesaid observations made and directions issued, both these revision petitions stand disposed of, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

2.8.2017
Ak Sharma

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No