

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

CR No.8460 of 2015

Date of Decision: 01.08.2017

Ram Chander and anotherPetitioners

Versus

M/s Unitech Ltd. ... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. O.P. Goyal, Sr. Advocate with
Mr. Piyush Aggarwal, Advocate
for the petitioners.

Mr. Aashish Chopra, Advocate
for the respondent.

RAJ MOHAN SINGH, J.(ORAL)

[1]. Petitioners have filed this revision petition against the order dated 15.09.2015 passed by Civil Judge (Junior Division), Gurgaon, whereby prayer in terms of Order 1 Rule 10 read with Section 151 CPC was declined.

[2]. A civil suit for permanent injunction was filed by the respondent herein, in which present petitioners being defendants set up a counter claim at the time of filing of the written statement. The suit was dismissed as withdrawn on 06.01.2011 and thereafter, the counter claim was treated to be a suit for the purposes of decision on merits. Counter claim was amended. The said aspect of the litigation was challenged by the respondent in CR No.5872 of 2013, which was got

dismissed as withdrawn on 26.09.2013. The said order is reproduced hereasunder:-

“After arguing for some time and after having obtained instructions telephonically, learned counsel for the petitioner seeks permission to withdraw the instant revision petition with liberty to the petitioner to raise all pleas available to it (including the pleas raised in the instant revision petition) in the written statement to counter claim of respondents-defendants.

Dismissed as withdrawn with liberty as aforesaid.”

[3]. At the time of dismissal of the aforesaid revision petition, a liberty was given to the petitioner therein to raise all the pleas available in the written statement to the counter claim. Amended counter claim in terms of prayer clause reads as under:-

- “i. To pass a decree of declaration declaring the notarized collaboration deed dated 14.01.2014 to be null and void and is not binding upon the ownership rights of the plaintiffs to meet the ends of justice.*
- ii. To pass a decree of declaration declaring the notarized General Power of Attorney deed dated 14.01.2004 to be null and void and is not binding upon the ownership rights of the plaintiffs to meet the ends of justice.*
- lii. To pass a decree of declaration declaring the*

agreement to sell dated 21.01.2004 to be null and void and is not binding upon the ownership rights of the applicants/plaintiffs to meet the ends of justice.

- iv. To pass a decree of declaration declaring the license/s obtained on the basis of notarized collaboration deed dated 14.01.2004 to be null and void and is not binding upon the ownership rights of the plaintiffs to meet the ends of justice.*
- v. To pass a decree of declaration declaring the sale deed Vasika No.17639 dated 02.12.2004 to be null and void and is not binding upon the ownership rights of the plaintiffs to meet the ends of justice.*
- vi. To pass a decree of declaration declaring the agreement dated 11.09.2009 and supplementary agreement dated 21.12.2009 to be null and void and is not binding upon the ownership rights of the plaintiffs to meet the ends of justice.*
- vii. To pass a decree of injunction restraining the defendant its employees, agent, assignees from giving possession to any third person of the suit land or any part thereof to meet the ends of justice.*
- Viii. To pass a decree of injunction restraining the defendant its employees, agent, assignees from entering into any deed of alienation of any kind for alienating the suit land (on the*

basis of collaboration agreement, GPA, sale deed, licenses and agreements dated 11.09.2009 and supplementary agreement dated 21.12.2009) to any third person or any part thereof to meet the ends of justice.

- ix. To pass a decree of possession of the suit land in favour of the plaintiffs and against the defendant to meet the ends of justice.*
- x. To pass a decree of declaration declaring the plaintiffs to be law full owner in possession of the suit land to meet the ends of justice.*
- xi. To award the cost of the counter claim in favour of the plaintiffs and against the defendant to meet the ends of justice.*
- xii. Any other relief which this Hon'ble Court may deem fit and proper may also grant in favour of the applicants/defendant and against the defendant to meet the ends of justice.”*

[4]. Thereafter, an application was filed by the counter claimants/petitioners under Order 1 Rule 10 CPC seeking to implead the proposed defendants/respondents, details of whom as per application under Order 1 Rule 10 read with Section 151 CPC are as under:-

- “1. Rhino Holding Pvt Limited Office at A-6, Hauz Khas New Delhi and corporate office at Unitech House, 'L' Block, South City-I, Gurgaon through its Director, Sh. A.S. Johar, as counter*

defendant No.2.

2. *Unitech Reality Pvt Ltd., Registered Office 6, Community Centre, Saket, New Delhi 110 017 and corporate office at Unitech House, 'L' Block, South City-I, Gurgaon through it's Authorized Representative Sh. Randhir Singh, as counter defendant No.3.*
3. *Unitech Realty Pvt Ltd., a wholly owned subsidiary of Unitech Limited having its Registered Office 6, Community Centre, Saket, New Delhi 110 017 through its Director Sh. Sanjay Chandra as counter defendant No.4.*
4. *State of Haryana, through Collector Gurgaon as defendant No.5.*
5. *Land Acquisition Collector, Urban Estate, Sector 14, Gurgaon as defendant No.6.*
6. *Haryana Urban Development Authority Gurgaon through its Administrator HUDA Complex Sector 14 Gurgaon as defendant No.7.*
7. *District Town and Country Planner at Sector 14, Gurgaon through DTP as defendant No.8.*
8. *Director Town and Country Planner*

Haryana at Chandigarh through its Director as defendant No.9.

9. *Tehsildar Halqa village Fatehpur Jharsa as defendant No.10.*

10. *Halqa Patwari village Fatehpur Jharsa as defendant No.11.”*

[5]. Trial Court took cognizance of the subject matter and set up two points for determination i.e.

(A) *Whether the present application is not maintainable as the same has been filed in counter claim?*

(B) *Whether the parties mentioned in para No.1 of the application are necessary parties?*

As regards point 'A', it has been found by the trial Court that the application is maintainable. As regards point 'B', the Court has observed that the perusal of relief clause of the counter claim does not show any such relief sought against the persons intended to be impleaded in the counter claim.

[6]. I have seen the prayer clause with reference to the documents which have been relied therein. It appears that the trial Court has not referred to the connectivity of the documents viz-a-viz the person, the reference of which has been made in the application and in the prayer clause of the counter claim.

[7]. In view of above, the impugned order is set aside. The

case is remanded to the trial Court with a direction to re-visit the controversy afresh in accordance with law on the basis of available material on record without being influenced by any observations made hereinabove. Let the needful be done within a period of three months from the date of receipt of certified copy of this order.

[8]. Disposed of.

01.08.2017

prince

Whether Reasoned/Speaking

Whether Reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No