

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.8555 of 2015 (O&M)

Date of decision: 02.08.2017

Rakesh Kumar

... Petitioner

Vs.

Municipal Corporation, Amritsar and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Anil Chawla, Advocate
for the petitioner.

Mr. Sanjeev Soni, Advocate
for respondent No.1.

RAMESHWAR SINGH MALIK, J. (ORAL)

Instant revision petition, at the hands of plaintiff and appellant before the learned first appellate Court, filed under Article 227 of the Constitution of India, is directed against the order dated 14.09.2015 (Annexure P-1), whereby the learned first appellate Court dismissed the application of the plaintiff-petitioner under Order 6 Rule 17 of the Code of Civil Procedure, seeking amendment in his plaint, so as to convert his suit for permanent injunction into a suit for mandatory injunction.

Notice of motion was issued and passing of final order was stayed.

Heard learned counsel for the parties.

It has gone undisputed before this Court that when the matter came up before this Court at an earlier point of time in CR No.4635 of 2008 (Rakesh

Kumar and another Vs. Municipal Corporation Amritsar), the said revision petition was disposed of, by this Court vide order dated 18.11.2008 (Annexure P-2) and operative part thereof, available at page 21 of the paper book, reads as under: -

“The learned counsel appearing on behalf of the respondent, on instructions from Mr. Shakti Bhatia, MTP, states that inadvertently the notice was issued to the father of the petitioner. He further states that no action on the said would be taken as the Municipal Corporation is proposing to issue fresh notice to the petitioner and thereafter action would be taken in accordance with law.

In view of the stand taken by the counsel for the respondent, this petition has been rendered infructuous.”

A bare perusal of the abovesaid order passed by this Court would show that the respondent-Municipal Corporation accepted its mistake, while issuing notice to father of the petitioner, because of inadvertence. It was further stated on behalf of the respondent-Municipal Corporation that no action shall be taken on the basis of earlier notice inadvertently issued, as the respondent-Municipal Corporation was intending to issue a fresh notice to the petitioner and only thereafter, action would be taken in accordance with law. Once that was the stand taken on behalf of the respondent-Municipal Corporation, it was least expected that no action of any kind whatsoever, including demolition of part of the building of the petitioner, would be taken by the respondent-Municipal Corporation.

Interestingly, the argument now raised before this Court on behalf of the respondent-Municipal Corporation is that petitioner himself demolished some

part of the construction, which was in violation of the building bye-laws. It does not appeal to reason at all. It is so said because once the earlier notice issued was admitted to have been wrongly issued by the respondent-Municipal Corporation and petitioner had been contesting his claim upto this Court, neither there was any necessity nor any occasion for the petitioner to carry out the demolition on his own. Under these changed circumstances, petitioner was left with no other option except to move an application before the learned first appellate Court seeking amendment in his plaint, so as to convert his suit for permanent injunction into a suit for mandatory injunction seeking a direction against the Municipal Corporation either to pay the damages to the petitioner-plaintiff or restore the building in its original condition. Since the learned Additional District Judge failed to appreciate the abovesaid changed circumstances forcing the petitioner to seek amendment in his plaint, before passing the impugned order, it cannot be sustained.

Respondent-Municipal Corporation cannot be permitted to play hide and seek with the Courts. Once they have given an undertaking before this Court on 18.11.2008, they were duty bound to abide by said undertaking. Under such circumstances, it might be a case of imposing exemplary costs on the respondent-Municipal Corporation, however, since the matter is still pending before the learned first appellate Court, it was thought appropriate not to impose the costs on the respondent-Municipal Corporation at this stage. So far the impugned order is concerned, it has been found suffering from patent illegality and perversity, because of which it cannot be sustained.

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 has caused serious prejudice to the petitioner, without there being any fault on his part, it cannot be sustained. Accordingly, the impugned order dated 14.09.2015 (Annexure P-1) passed by the learned Additional District Judge is hereby set aside. Amendment sought by the petitioner-plaintiff in his plaint is allowed.

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

02.08.2017
vishnu

[RAMESHWAR SINGH MALIK]
JUDGE

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