

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

CR No.8343 of 2017

Date of decision: 19.12.2017

Era Sood.

... Petitioner

Versus

Shri Achleshwar Mahadev Gian Panthi Sewa Mandal & Ors. ... Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present : Mr. Aditya Dassaur, Advocate for the petitioner.
Ms. Rakhi Sharma, Advocate for respondent No.1.

B.S. WALIA, J. (ORAL)

[1] Challenge in this petition is to order dated 11.10.2017 passed by the learned Civil Judge (Jr. Division), Ludhiana (Annexure P-11) in Civil Suit No.454/5716/23.12.2016 in case titled as "Shri Achleshwar Mahadev Gian Panthi Sewa Mandal v. PSPSCL & Others" whereby the application filed by the petitioner under Order 1 Rule 10 of the CPC for being impleaded as defendant No.4 was dismissed.

[2] Brief facts of the case leading to the filing of the revision petition are that the Plaintiff/respondent No.1 instituted a suit against the Punjab State Power Supply Corporation Limited and its other functionaries with the following prayer:-

"Suit for decree of permanent injunction restraining defendants their agents, servants, employees etc. from disconnecting or causing to disconnect the electric supply from the meter NRS account No.3015008751 installed in the name of plaintiff on the corner of street No.3, Deep Nagar, Civil Lines, Ludhiana for the water tank, water cooler installed by the plaintiff for free public utility in street No.3, Deep Nagar, Civil Lines, Ludhiana in any manner whatsoever, on the basis of oral and documentary evidence."

[3] Paragraph No.3 of the plaint which is relevant is also reproduced hereunder :-

“3. That the NRS electric connection having the meter account No.3015008751 has been granted in the name of plaintiff on the corner of street No.3, Deep Nagar, Civil Lines, Ludhiana for the water tank, water cooler installed by the plaintiff for free public utility in street No.3, Deep Nagar, Civil Lines, Ludhiana. The plaintiff has been using the electric supply through the above said connection only for public utility of water to public and needy persons and the plaintiff has been paying the electricity charges regularly and nothing is due till date.”

[4] A perusal of paragraph Nos. 2 & 3 above i.e. prayer clause as well as averments in the suit filed by plaintiff/respondent No.1 reveals that a water tank and water cooler were installed by plaintiff/respondent No.1 as a public utility in Street No.3, Deep Nagar, Civil Lines, Ludhiana and that the plaintiff/respondent No.1 had been using electric supply from the PSPCL for the same.

[5] The petitioner is owner of property bearing No.B-I-1008 (M.C. No.B-I-1008/I) situated at Deep Nagar, Gali No.3, Civil Line, Ludhiana i.e. in front of the place where the aforesaid water tank and water cooler have been installed by plaintiff/respondent No. 1 for which electricity connection was obtained by plaintiff/respondent No.1 from PSPSCL. The petitioner who was facing undue harassment due to the installation of the water cooler and water tank in front of her property filed several applications under the RTI Act to elicit information regarding legality of the said installation by plaintiff/respondent No.1.

[6] In response to the application's filed by the petitioner under the RTI, the Municipal Corporation vide letter dated 03.08.2015 (Annexure P3) disclosed that neither the water tank nor the water cooler had been installed

by the Municipal Corporation nor had any permission been taken nor granted for installation of the same.

[7] On grant of an ad interim injunction to plaintiff/respondent No.1 by the learned trial Court in the suit as referred to above, the petitioner due to harassment faced by her on account of the functioning of the illegal water tank and water cooler in front of her property, moved an application before the learned trial Court under Order 1 Rule 10 of the CPC for being impleaded as a defendant in the suit on the ground that she was a necessary party for the adjudication of the suit. The application was dismissed by the trial Court vide order dated 11.10.2017 (Annexure P-11).

[8] Revision petition has been filed against the afore-mentioned order on the ground that the applicant/petitioner is a person whose presence before the Court is necessary to enable the Court to effectually and completely adjudicate upon and settle all questions involved in the suit, therefore necessary to be impleaded as a defendant in the suit.

[9] A perusal of paragraph No.6 of the plaint filed by the plaintiff/respondent No.1 reveals the averments of the Municipal Corporation and its officers trying to disconnect at the instance of the petitioner, the electricity connection of the water cooler installed by the plaintiff/respondent No.1. On the basis of the same, learned counsel contended that since the plaintiff/respondent No.1 had itself stated in the suit with regard to the role of the petitioner as giving rise to the cause of action for institution of the suit for seeking a perpetual injunction, it was apparent that the petitioner/applicant was a necessary party for the adjudication of the dispute.

[10] Learned counsel for the applicant/petitioner further contended that perusal of Annexures P-3 and P-4 i.e. letters dated 03.08.2015 and

08.09.2015 revealed beyond an iota of doubt that neither permission had been sought nor granted by the Municipal Corporation to the plaintiff/respondent No.1 nor had the Municipal Corporation installed the water tank and water cooler and that since the installation by plaintiff/respondent No.1 of the water tank/water cooler was illegal and amounted to encroachment of public street, therefore, the petitioner who had been following up the matter with the authorities for removal of the said illegal encroachment was a necessary party, therefore ought to have been impleaded as defendant.

[11] Learned counsel for contesting plaintiff/respondent No.1 on the other hand contended that the learned trial Court had rightly rejected the application of the petitioner/applicant for being impleaded as a party under Order 1 Rule 10 of the CPC for although a separate cause of action may exist in favour of the applicant against the plaintiff/respondent No.1 Society yet the plaintiff had a different cause of action against PSPSCL with regard to disconnection of the electricity connection to the water tank and water cooler installed in the street in front of the petitioner's house.

[12] Learned counsel for the petitioner relied on the decision of this Court in **Nand Lal Nandwani v. Bhagwan Dass, 1986 PLJ 223** in support of the plea of the petitioner for being impleaded as a party to the suit. Relevant extract of the same is reproduced as under:-

“After consideration of the arguments of the learned counsel for the parties and going through the above rulings, I have come to the opinion that Bhagwan Dass, though not a necessary party but can be said to be proper party. As noticed earlier, his house is said to be situated opposite to the site in dispute just across the street. According to Bhagwan Dass, the site in dispute has been reserved in the colony by the Municipal Committee as a park. Every person is interested in the environments of his house. According to Bhagwan Dass, the Municipal Committee is colluding with the plaintiff and thus the

plaintiff will be successful in encroaching upon a part of the site reserved for a park. It is not a strict rule that a person cannot be added as a defendant against the wishes of the plaintiff. If a person is likely to be affected by the result of the suit, he becomes a proper party and should be allowed to be added.”

[13] A perusal of the aforementioned extract reveals that the applicant therein had been allowed to be impleaded as a party by taking note of the fact that he was aggrieved of the encroachment upon a part of the site reserved for a park by the Municipal Committee in front of his house and that every person had an interest in maintaining the environment of his house. Accordingly, the applicant was allowed to be impleaded as a defendant by observing that even if the applicant was not a necessary party, he was still entitled to be added as a proper party, even against the wishes of the plaintiff since he was likely to be affected by the result of the suit.

[14] Learned counsel for the petitioner has also produced a copy of RTI response from the Municipal Corporation, Ludhiana with regard to query as to whether Street No.1, Deep Nagar to Street No.8, Deep Nagar had been declared to be a public street by the Municipal Corporation, Ludhiana. Learned counsel by referring to reply thereto read out that the streets in question had been declared as public streets on 13.02.1974. On query learned counsel for the respondent did not deny the position as referred to above. Learned counsel for the petitioner contended that in the circumstances it was evident not only from the contents of paragraph No.3 of the plaint but also from the prayer clause therein that the encroachment by way of illegal installation was on public street No.3, Deep Nagar, immediately in front of the property of the petitioner. Due to resultant harassment, the petitioner has been raising the matter with the authorities and received response from them indicating that no sanction had been

granted by them for the installation of the water tank/water cooler and that the installation had been made without permission.

[15] Suit instituted by the plaintiff/respondent No.1 is for restraining the PSPSCL from disconnecting the electricity supply to the said water tank/water cooler in order to enable plaintiff/respondent No.1 to continue operating the said water tank/water cooler. Grievance of the petitioner is that PSPSCL is colluding with plaintiff/respondent No.1 by not filing appropriate defence by way of written statement, therefore, the apprehension of the petitioner is that thereby the illegal encroachment would be permitted to be continued in derogation of the law as well as the rights of the petitioner.

[16] The petitioner has an interest in maintaining the environment in front of her house. Accordingly, the petitioner is entitled to be impleaded as a defendant, if not as a necessary party, as a proper party, since she is likely to be affected by the result of the suit. In the circumstances, it is apparent that the petitioner has a vital interest in being impleaded as a party to the suit if not as a necessary party then at least as a proper party.

[17] In the light of the position as noted above, impugned order dated 11.10.2017 passed by the learned Civil Judge (Jr. Division), Ludhiana (Annexure P-11) is set aside, application filed by the petitioner is allowed and the petitioner is ordered to be impleaded as defendant No.4.

[18] Revision petition allowed as above.

(B.S. Walia)
Judge

19.12.2017
amit

Note:

- | | | |
|---|---|---------|
| 1. Whether the order is reasoned/speaking | : | Yes/No. |
| 2. Whether the order is reportable | : | Yes/No. |