IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.8607 of 2014
Date of decision: 17.01.2017

Kumari Kumud Jain **..Petitioner**

Versus

Vijay Kumar **..Respondent**

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Vivek Khatri, Advocate for the petitioner.

Mr. Harkesh Manuja, Advocate for the respondent.

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Daya Chaudhary, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 20.08.2014 passed by Additional Civil Judge (Senior Division), Hansi, whereby, the application filed by the respondent under Order 6 Rule 17 CPC has been allowed. A further prayer has also been made for stay of operation of impugned order dated 20.08.2014 during pendency of this revision petition.

Briefly, the facts of the case as made out in the present revision petition are that the petitioner filed an application under Order 9 Rule 13 read with Section 151 CPC for setting aside judgment and decree dated 13.11.2010 passed by the Additional Civil Judge (Senior Division), Hansi in Civil Suit No.137-C of 2010 and ex-parte order dated 30.07.2010. The plaintiff filed a civil suit for possession by way of specific performance of an agreement to sell dated 18.08.2005 regarding 1/4th share of the land measuring 8 kanals in Khasra No.163/4/2/2 (2-4), 4/2/1 min south (5-16) situated at Narnaund, District Hisar. The said suit was decided vide

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judgment and decree dated 13.11.2010. Thereafter, an application under Order 6 Rule 17 read with Section 151 CPC was moved by the respondent for amendment of reply dated 25.07.2011 on the ground that instead of word "correct" with regard to receiving of an amount of ₹11,50,000/- on 22.10.2009 and receiving of ₹5,75,000/- on 22.04.2009, the word "incorrect" was mentioned and the same be replaced as it was wrongly typed. Reply to the application was filed by the respondent on 25.07.2011, He has sought the said amendment after passing of more than 2 years. Said application was allowed vide order dated 20.08.2014, which has been challenged in the present revision petition.

Learned counsel for the petitioner submits that the application was moved by the respondent after a period of more than 2 years from the date of filing the reply in the case. The amendment would have serious affects on the rights of the petitioner. Learned counsel also submits that the purpose for filing application for amendment is to delay the proceedings of the suit and to deprive the rights of the petitioner. At the end, learned counsel for the petitioner submits that the respondent cannot be allowed to fill up the lacuna of the case and as such, the application has wrongly been allowed without considering the facts as mentioned above.

Learned counsel for the respondent submits that due to typographical mistake, the word "correct" was mentioned only at one place whereas in other parts of the written statement, the word "incorrect" was mentioned. There is no purpose to delay the proceedings or to fill up the lacuna. Learned counsel further submits that the amendment in the suit/written statement can be made at any stage of the proceedings. Learned

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counsel for the respondent has also relied upon judgments of this Court in ***Gurnam Singh vs. Hari Mohan, 2001(2) Civil Court Cases 175, M.S. Sandhu vs. Gurnam Singh etc., 2006(2) ISJ (Banking) 309, Sher Singh vs. Jagir Singh and others, 1990(1) Revenue Law Reporter 351***; judgment of the Bombay High Court in ***Haren Krishnakumar Mehta vs. Kamla Pribhdas Nebhanani, 2001(2) Civil Court Cases 177 (Bombay)*** and judgment of the Patna High Court in ***Kedar Prasad vs. Raghunath Prasad, AIR 1992 Patna 95*** in support of his contentions.

Heard arguments of learned counsel for the parties and have also perused the impugned order as well as other documents available on the file.

The petitioner is aggrieved by the order passed in the application moved under Order 6 Rule 17 CPC by the respondent. The only grouse raised by learned counsel for the petitioner is that the application has been moved just to delay the proceedings and to fill up the lacuna. It has also been mentioned that serious prejudice would be caused to the petitioner.

Admittedly, Order 6 Rule 17 CPC relates to amendment of the pleadings and there is no other specific provision contained in the Code of Civil Procedure, whereby, a party can apply for amendment of the application/written statement except Order 6 Rule 17 CPC.

In the present case, the amendment has been sought only on the ground that there was typographical mistake as instead of word “incorrect”, word “correct” was mentioned at only one place in the written statement.

On perusal of the written statement, it is apparent that at

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different places, the word “incorrect” has been mentioned and only at one place the word “correct” is mentioned, which appears to be inadvertent.

The equity of justice demands that to prevent the abuse of the process of the Court, an amendment in the terms as prayed should be allowed. The trial Court has rightly exercised the powers provided under Order 6 Rule 17 CPC or under Section 151 CPC. The Court has power to allow the amendment in the pleadings by exercising the inherent power in certain appropriate cases by considering the ends of justice and for preventing abuse of the process of the Court. To hold otherwise would result in miscarriage of justice.

It has been held by this Court as well as Hon'ble the Apex Court in various judgments that by quoting of wrong provision does not take away the jurisdiction of the authority. It is also well settled that if an authority has a power under the law but while exercising the power, in mentioning a wrong provision of law, it does not vitiate the exercise of power so long as the power exists. The impugned order has been passed by considering the ends of justice by considering that it was inadvertently mentioned in the written statement.

In view of facts as mentioned above, there is no force in the arguments raised by learned counsel for the petitioner and the revision petition being devoid of any merit is dismissed.

17.01.2017 **(DAYA CHAUDHARY)**
neetu **JUDGE**

√
Whether speaking/reasoned Yes/No

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Whether Reportable Yes/No

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