

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Civil Revision No.1265 of 2018

Date of Decision: 22.02.2018

M/s Virgo Marketing

....Petitioner (s)

Versus

M/s Polycab Wires Pvt. Ltd. & another

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Pushpinder Kaushal, Advocate
for the petitioner(s).

HARI PAL VERMA, J. (Oral)

At the outset, learned counsel for the petitioner states that there is a typographical mistake in the head note of this petition, as this petition is required to be treated under Article 227 of the Constitution of India instead of Section 227 C.P.C.

Prayer made by learned counsel is accepted. Accordingly, the present petition is being dealt with under Article 227 of the Constitution of India.

Through the instant petition, petitioner-plaintiff has sought a direction to the trial Court to decide the suit filed on behalf of the petitioner-plaintiff, in some specified time-bound frame and also to take a decision on the application filed by the respondent-defendants, whereby leave to defend has been sought.

Learned counsel for the petitioner states that he confines his prayer to extent of taking a decision on the application seeking leave to defend, filed on behalf of the respondent-defendants.

Learned counsel for the petitioner has argued that the petitioner-plaintiff has filed a suit under Order 37 CPC for recovery of Rs.92,40,505/- along with interest on the basis of memorandum of understanding, as entered between the parties. On 04.02.2016, respondent-defendants moved an application under Order 37 Rule 3(5) read with Section 151 CPC, seeking leave to defend and contest the matter. The petitioner-plaintiff filed reply to the said application on 19.03.2016, but thereafter, the matter is being adjourned repeatedly without any decision on the said application. He submits that the very purpose filing the suit under Order 37 CPC would be frustrated if the suit is treated as a regular suit and is not decided by way of summary proceedings. Therefore, trial Court be directed to decide the aforesaid application filed on behalf of the respondent-defendants, whereby leave to defend has been sought. He has referred to various zimni orders passed by the Civil Court to substantiate his argument that the matter is being adjourned by the Civil Court and the application is pending consideration of the Court.

Though counsel for the petitioner says that reply to the said application was filed on 19.03.2016, however, a perusal of various zimni orders shows that reply to the said application was not filed. But learned counsel for the petitioner has invited the attention of this Court to order dated 19.03.2016 to suggest that reply to the application for leave to defend

was filed on that day itself. Thus, zimni orders are not correct so far as filing of reply to the application for leave to defend is concerned.

Having heard learned counsel for the petitioner and considering the fact that once the respondent-defendants have filed an application seeking leave to defend, in a summary suit, this Court finds that the prayer made on behalf of the petitioner for an early decision on the application moved the respondent-defendants deserves to be decided at the earliest.

Accordingly, without commenting upon the merits of the case, the present petition is disposed of with a direction to the trial Court to decide the application so moved by the respondent-defendants, seeking leave to defend, on the date so fixed i.e. 09.03.2018 or within one month thereafter, in accordance with law.

However, it is made clear that the trial Court shall decide the said application without being influenced by any observation made by this Court, in any manner.

The present petition has been disposed of, at this stage, without issuance any notice to the respondents for the reason that in case notice is issued to the respondents, it will further delay the proceedings. Still, in case the respondents feel prejudice by this order, they are at liberty to file an application for recalling of this order.

February 22, 2018
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No