

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

**Civil Revision No.2301 of 2015
Date of Decision:-17.01.2018**

Rajpati

...Petitioner

Versus

Bimla and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Arun Luthra, Advocate
for the petitioner.

Mr. Ashish Pannu, Advocate
for respondent No.1.

AMIT RAWAL J.(Oral)

The present revision petition is directed against the impugned order whereby application moved by the petitioner-defendant under Order 6 Rule 17 CPC for amendment in written statement in a suit seeking specific performance of agreement dated 6.2.2009 in respect of the suit property being a vendor has been rejected.

Mr. Arun Luthra, Advocate learned counsel appearing on behalf of the petitioner submitted that the suit for specific performance of

agreement to sell dated 6.2.2009 was instituted on 17.9.2009. Notice of the suit was issued to the petitioner-defendant and others and upon that Mr. Krishan Malik, Advocate put in appearance on their behalf and filed written statement on 17.8.2010 by admitting the whole case of the plaintiff. It was alleged that she was kidnapped by defendant Sunil Kumar-defendant No.4 and subsequently under his pressure executed the release deed in favour of the remaining defendants. It is further stated that Shri Krishan Malik, Advocate was never engaged by the petitioner as her counsel and the written statement said to have been filed in the trial Court was without her knowledge. In this regard an application for amendment of written statement was filed on 09.10.2012 to withdraw the contents of the written statement. Even the matter was reported to the police and Kalandra proceedings were initiated. In fact neither any counsel was engaged nor filed any written statement in the trial Court and the written statement, if any, was without her knowledge.

Learned counsel appearing for the respondent-plaintiff submitted that the release deed dated 24.8.2009 which was already in existence when the unamended written statement dated 17.8.2010 was filed. Nothing prevented the defendant to deny the execution of the same. The admission in written statement resulted in accrual of certain rights in favour of respondent-plaintiff which cannot be allowed to be withdrawn as it will seriously prejudice their interest and urges this Court for the dismissal of revision petition. He further submitted that apparently the petitioner had been blowing hot and cold as during the course of arguments shown the

certified copy of the summons which were received by her only.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force in the submissions of learned counsel for the petitioner, for, the written statement is dated 17.8.2010 whereas the suit was filed in 2009. No allegations of any kidnapping or threat were attributed to the plaintiff but only against respondent No.4 who is none else but her son, no FIR has been lodged with regard to any alleged kidnapping. Prima facie it appears to be a collusion between petitioners and defendant No.4. Be that as it may, had any incident of kidnapping actually taken place the petitioner-defendant could have lodge an FIR as she has been divested of the title in the property. It is settled law that the amendment which is clarificatory and does not take the valuable rights of the plaintiff can always be allowed but withdrawal of the admission as indicated above would certainly prejudice the rights of the plaintiff particularly when the witnesses of the plaintiff have already been cross-examined and the suit is listed for defendants' evidence.

I do not find any illegality and perversity in the impugned order much less exceeding the jurisdiction. No grounds for interference is made out. I would refrain myself commenting upon with regard to receipt of summons received by the petitioner-defendant.

Dismissed.

January 17, 2018
Vijay Asija

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No