

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

CR No.2558 of 2017(O&M)
Date of Decision: 16.11.2018

Gurdev Singh ... Petitioner
Vs
Balbir Singh and others ... Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Rajinder Goyal , Advocate
for the petitioner.

RAJ MOHAN SINGH, J. (ORAL)

[1]. Petitioner has preferred this revision petition against the order dated 05.11.2016 passed by Civil Judge (Senior Division), Guhla, whereby the application filed by the petitioner for expunging/deleting the adverse remarks in the judgment dated 29.09.2016 was dismissed.

[2]. Few facts are necessary to be quoted. Civil Suit titled Balbir Singh Vs. Chand Singh and others for possession by way of specific performance of agreement to sell was filed in the trial Court through Sh. Anand Gupta, Advocate on 03.01.2003. After service, the defendants appeared through their counsel and filed their written statement. Para No.5 of the preliminary objections in the written statement was to the following effect:-

“5. That the plaintiff is guilty of suppression of true and material facts from this ld. Court. Real facts are that defendants never

agreed to sell the suit land to the plaintiff for the alleged consideration of Rs.6,00,000/- nor executed the alleged agreement to sell dated 05.08.1999 nor received Rs.4,00,000/- as advance/earnest money from the plaintiff as alleged. The defendants never executed agreement to sell dated 05.08.1999 in favour of plaintiff nor signed/thumb marked the same nor the contents of agreement were read over and made understood to the defendants. The signatures/thumb impression of defendants, if any, on the alleged agreement to sell dated 05.08.1999, the same are result of fraud, collusion and mis-representation. The alleged agreement is not binding on the defendants nor is specifically enforceable.”

[3]. Perusal of the aforesaid preliminary objection as well as contents of original written statement would show that no overt-act was pleaded in the context of any Advocate. The aforesaid written statement was filed on 05.02.2003 through Sh. F.C. Rana, Advocate. Thereafter, the plaint was sought to be amended and in fact, was allowed to be amended by the trial Court vide order dated 10.08.2004 on the basis of no objection given by the defendants through their counsel Sh. F.C. Rana.

[4]. Learned counsel for the defendants made a statement before the trial Court that he had no objection in allowing the application for amendment. The application was accordingly allowed. Amended plaint was also filed in pursuance of acceptance of the application. The case was adjourned for filing amended written statement by the defendants. The amended plaint filed by the plaintiff

was in the context of given description of the land in para Nos.1 and 2 of the plaint. In the amended written statement filed by the defendants, some additional pleas were taken in preliminary objections which according to the plaintiff were not in consonance with the amended plaint. The additional pleas taken by the defendants were in the context of misconduct on behalf of Sh. Gurdev Singh, Advocate in collusion with Sh. F.C. Rana, Advocate for the defendants.

[5]. In the replication filed by the plaintiff, the plea was taken that the additional pleas taken by the defendants in the preliminary objections taken in their amended written statement were beyond the scope of amended plaint. This was highlighted by way of specific objections in the replication.

[6]. Trial Court after due consideration of pleadings of the parties, passed the order dated 31.10.2007 disposing of the objections taken by the plaintiff by ordering that the additional pleas taken by the plaintiff in their written statement were liable to be ignored. The operative part of the order was to the following effect:-

*“It is now well settled that defendants are required to answer only those pleas which have been taken by the plaintiff by way of amendment. A new plea cannot be permitted to be added in the garb of a consequential amendment, though it can be applied by way of an independent or primary amendment. The amended written statement should confine to the plea introduced by way of amendment by the opposite party. Reference in this regard may also be made to the authorities **Gurdial Singh and others***

Vs. Raj Kumar Aneja and others, 2002(2) CCC 1 (SC) and Ram Kumar and others Vs. Madan Lal Tyagi, 2006(4) CCC 512 (P&H). Accordingly I find sufficient merit in the special objection taken by plaintiff while filing replications to the amended written statements of defendants. The additional plea taken by the defendants in their amended written statements are liable to be ignored. The objections taken by plaintiff stand disposed off accordingly. Now to come up for rebuttal evidence if any and arguments on 28.11.2007.

Announced:-

*Additional Civil Judge (Senior Division)
Guhla, 31.10.2007.”*

[7]. Thereafter, an application was filed by the defendants for amendment of written statement seeking to take recourse to the allegations which were ordered to be deleted by the trial Court vide order dated 31.10.2007 without challenging the order dated 31.10.2007 passed by Additional Civil Judge (Senior Division), Guhla. The application for amendment of written statement seeking to incorporate the additional pleas was dismissed by the trial Court vide order dated 03.11.2009 after recording all the incriminating facts.

[8]. Additional Civil Judge (Senior Division), Guhla dismissed the suit vide judgment and decree dated 29.09.2016. However, allegations in terms of additional pleas which were ordered to be deleted by the trial Court were taken into consideration by the trial Court while dismissing the suit on merits. Those incriminating facts were noticed by the trial Court in para Nos.23 to 26, 29 to 32, 40, 41

and 43 of the judgment. In the appeal filed by the plaintiff before the Lower Appellate Court, a compromise was effected between the parties and the appeal was disposed of on the basis thereof. However, the adverse remarks recorded in the judgment of the trial Court remained unaffected by the disposal of the appeal on the basis of compromise.

[9]. Faced with situation, Sh. Gurdev Singh, Advocate who was engaged by the plaintiff only on 20.08.2008 after filing of original written statement by the defendants, moved an application for expunging/deleting the adverse remarks recorded in the judgment of the trial Court. The said application was dismissed by the trial Court on the ground that the judgment of the trial Court was amenable to first appeal. In fact, the appeal was filed where the prayer ought to have been made.

[10]. I have considered the submissions made by learned counsel for the petitioner at the bar.

[11]. Notice of motion was issued on 14.07.2017. The service was duly effected on the respondents. It was so recorded in the order dated 14.05.2018 passed by the Co-ordinate Bench that respondents have not preferred to appear in this case, therefore I proceed to hear the arguments on merits.

[12]. Evidently, the suit was filed on 03.01.2003 through Sh. Anand Gupta, Advocate. Original written statement was filed by the defendants through Sh. F.C. Rana, Advocate on 05.02.2003. No

allegation of overt-act of any type was alleged against the counsel for the plaintiff, rather the counsel for the plaintiff at the relevant stage was Sh. Anand Gupta. Sh. Gurdev Singh, Advocate was only engaged by the plaintiff on 20.08.2008. After acceptance of the application of amendment of plaint, amended written statement was filed beyond the scope of amended plaint and the same was objected to by the plaintiff in the replication. Objections raised by the plaintiff in the plaint was duly entertained by the trial Court and it was ordered on 31.10.2007 that the additional pleas taken by the defendants in their amended written statement be ignored. In essence, incriminating allegations made in the form of additional pleas were required to be deleted from the pleadings. The order dated 31.10.2007 was never assailed by the defendants in any manner and the same had attained finality.

[13]. Thereafter, an application for amendment of the written statement was again filed seeking to incorporate the same very additional pleas which were ordered to be deleted from the amended written statement on earlier occasion. The said application for amendment of written statement was dismissed by the Additional Civil Judge (Senior Division), Guhla vide speaking order dated 03.11.2009, Despite the aforesaid fact, the trial Court proceeded to take notice of amended written statement wherein additional pleas were incorporated at the first instance, though the same were not to be read by the Court by virtue of orders dated 31.10.2007 and 03.11.2009 vide

which second application for amendment of written statement was dismissed. Still the trial Court proceeded to note the incriminating allegations against the petitioner. The application filed by the Advocate has been declined on the premise that the judgment and decree of the trial Court was amenable to appeal.

[14]. Considering the nature of controversy, I find that this is a fit case to exercise supervisory jurisdiction of this Court under Article 227 of the Constitution of India. The plea having been accepted for deletion of incriminating allegations ought not to have been raked up by the trial Court. Additional pleas were already ordered to be deleted on 31.10.2007 and thereafter, intended effort of the defendants to incorporate the same in the amended written statement was also failed.

[15]. For the reasons recorded hereinabove, this revision petition is allowed. Incriminating allegations forming part of judgment in para Nos.23 to 26, 29 to 32, 40, 41 and 43 are ordered to be expunged/deleted.

16.11.2018
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No