

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CM-10698-CII of 2017 in/&

CR No. 3159 of 2017 (O&M)

Date of decision : 23.04.2018

Baldev Singh & ors.

....Petitioners

V/s

State of Punjab & ors.

....Respondents

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Nakul Sharma, Advocate for the applicant-petitioners.

Mr. V. Ramswaroop, Addl. A.G. Punjab.

Mr. Chetan Mittal, Sr. Advocate with
Mr. Kunal Mulwani, Advocate for respondent no. 4.

RAJAN GUPTA J.

Present revision petition is directed against the order passed by Civil Judge, (Junior Division), Jagraon rejecting the application moved by petitioners for impleadment as defendants in the civil suit. Petitioners contended that they were working as stamp vendors, typists, deed writers etc for two decades. Their plea is that plaintiff-Bar Association filed a suit for mandatory injunction against the State to vacate the site without impleading the petitioners, who were necessary parties, in the array. It was contended that the court below rejected the application observing that the controversy was essentially between Bar Association and the State Government. Besides, there was nothing to show that applicants had permission to run their business in cabins/chambers in the judicial court complex. Plaintiff being *dominus litus*, applicants had no right to be arrayed as defendants.

This court entertained the revision petition on 05.05.2017 and issued notice to State for 31.05.2017. On 15.05.2017, an application (CM No. 10698-CII of 2017) was moved and this court was apprised that on 08.05.2017 the court issued summons to SDM Jagroan. On his failure to file reply, his defence was struck off. On 10.05.2017 after recording statements of the plaintiffs, it even decreed the suit. As CM No. 10698-CII of 2017 was moved before this court, it stayed execution proceedings as well as demolition of the structures and sought explanation of the concerned officer about the reasons for deciding the matter post haste. Another CM No. 12296-CII of 2017 was moved wherein it was mentioned that Presiding Officer, Jagraon passed decree on 10.05.2017 while he was under transfer. It was, thus, inexplicable how suit could be decreed. It was vehemently contended during the course of arguments that defence of the State was struck off without complying with the provisions of Order VIII Rule 10 CPC.

I have heard learned counsel for the parties and given careful thought to their respective submissions.

From 17.04.2017 till 03.05.2017 case was adjourned 4/5 times. On 08.05.2017 itself defence was struck off, thus, depriving the defendant of right to file reply. It appears an application under section 114 CPC was also moved for review of the order on 08.05.2017 but same was rejected. From the facts and circumstances of the case, it is evident that suit was decreed by the court without following the procedure envisaged by Code of Civil Procedure. The court was aware of the fact that this court was seized of the matter yet it proceeded post haste. Defence of the State was struck off on 08.05.2017 After striking off the defence, the trial court adjourned the case

to 10.05.2017 and recorded evidence of the plaintiffs' witnesses. It appears that suit was decreed on the same day without the witnesses being cross-examined. There is thus, material irregularity in entire proceedings before the trial court. Procedure as envisaged by the Code of Civil Procedure has not been followed. Even plea of the petitioners for impleadment was rejected without assigning any cogent reasons.

Suit having been decreed, this court has been presented with a *fait accompli*. It does not intend to set-aside the judgment and decree in revisional jurisdiction. However, the decree being in *personam* and not in *rem* would not affect the rights of the petitioners. They shall be at liberty to seek remedy in accordance with law. With these directions, this petition is disposed of.

Explanation of the Officer has been received pursuant to order dated 15.05.2017. Same shall be dealt with on the administrative side.

April 23, 2018

Ajay

(RAJAN GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No