IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No.3700 of 2016
Date of Decision.16.04.2018

Ramu alias Lala ......Petitioner

Vs

M/s Vikram Electric Equipment Pvt. Limited .....Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Gurinder Pal Singh, Advocate
for the petitioner.

Mr. Chetan Mittal, Senior Advocate with
Mr. Harsh Bunger, Advocate
for the respondent.

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AMIT RAWAL J.(ORAL)

The revision petition is directed against the order 09.05.2016 whereby the application moved by the respondent-plaintiff for recalling of the order dated 15.03.2016 has been allowed.

Mr. Gurinder Pal Singh, learned counsel appearing on behalf of the petitioner-defendant submitted that the respondent-plaintiff instituted the suit for recovery of the amount of ₹35 lacs whereby the defendant along with others had approached the plaintiff with an offer to sell the land claimed to be owned by him situated in revenue estate of Kherki Daula, Tehsil Sohna, District Gurgaon. After negotiation, the sale consideration in respect of land was settled at ₹1,50,00,000/- per acre but the defendant only gave the photocopy of the document despite the fact that the plaintiff insisted to produce certified copies. The plaintiff through broker had made payments as referred in para 6 of the plaint. The defendant and his co-sharer proceeded to execute and register the sale deed in favour of the associate company of the plaintiff namely M/s Mohak Real Estate Pvt. Ltd., which was registered on payment of valuable sale consideration of ₹4,60,31,250/-. The plaintiff requested the defendant to adjust the payment of ₹35 lacs made earlier but the defendant did not accede to the request of the plaintiff. It is in that background, the suit aforementioned was filed.

The defendant contested the suit by filing written statement denying all the averments in the plaint. It was specifically alleged that the plaintiff had entered into agreement to sell in respect of land measuring 11 kanals 3 marlas situated in Sector 76, Gurgaon for sale consideration of ₹50 lacs per acre in the year 2005 with the defendant and ₹7 lacs were received by the defendant at the time of execution of the agreement to sell but the plaintiff did not turn up to perform his part of the agreement and in the meanwhile the rate of the land went up. The plaintiff issued two cheques of ₹15 lacs each and one cheque of ₹20 lacs in favour of the defendant and it was also settled between them with the help of broker that the plaintiff will purchase the aforementioned land for a sum of ₹2,12,34,000/- and the amount of ₹57 lacs which was received by the defendant at the time of earlier agreement shall stand forfeited.

Since both the parties were at variance, the trial Court framed the following issues:-

"1. Whether the plaintiff is entitled to recovery of a sum of ₹47,25,000/- from the defendant along with interest as alleged? OPP

2. Whether the plaintiff has concealed the material facts from the court, if so, its effect? OPD

3. Whether suit is bad for non-joinder and mis-joinder of *necessary parties?*

4. Whether suit is not maintainable in the present form? OPD

5. Whether suit is barred by limitation? OPD

6. Relief."

When the petitioner-defendant was leading evidence in support of averments made in the plaint, he had summoned DW-9, Arvind Singh, General Manager of DLF. In his statement, Ex.P2, he stated that he had seen the accounts after receipt of notice from the Court which were seen by him in his office after summoning the same from Mr. Arun Bhagat, being head of the department, who dealt with both the accounts and maintained accounts of the companies and therefore, he cannot say anything about the records. In view of the aforementioned fact, the petitioner plaintiff moved an application for summoning Mr. Arun Bhagat, Head of Accounts Department of DLF along with following records:-

"(i) Full list of associate/nominate COs of D.L.F. including pt/co namely M/s Vikram Electric as existed in yr. 2005 & 2006 and on dates 21.4.2008 & 28.5.08.

(ii) Full A/Cs including ledgers etc. of money in different banks at Gurgaon & Delhi which stood in the name of S.S. Dabra and same was spent in purchasing of lands for different co(s) including present pt./co, M/s Mohak Real Estate & M/s Nadish Real Estate.

(iii) Full details of A/c & ledgers etc. regarding two specific sale deeds bearing V.N.(s) 5640 dt. 27.12.05 and 5700 dt. 13.12.06, executed by Ramu @ Lala in f/o Mohal Estate & Nadish Estate respectively.

(iv) Full details of A/c including Cash Book & ledgers pertaining to total payments at different time & intervals paid to Ramu @ Lala -deft. From the A/cs of S.S. Dabra & abovesaid two companies & the pt.

(v) Record showing explanation as to why all cheques issued to Ramu deft. Prior 27.12.05 V.N. 5640 were not recited in said 1st sale deed instead two of them in 2nd sale deed dt. 13.12.06.

(vi) Whether all aforesaid A/c(s) were mentioned in regular course of business of pt./co. and said two companies namely M/s Mohal Real Estate & M/s Nadish Real Estate regarding at least to the total payment to Ramu-deft.

(vii) How all of a sudden redemption amount of Rs.5 lacs were paid to the Central Coop. Land Mortgage Ltd., Gurgaon on behalf of Ramu deft on or about 21.4.2008 by D.L.F. in respect of the land involved in 2nd sale deed dt. 13.12.06 & then to report before Patwari on 21.4.08 & thereafter getting mutation thereof sanctioned on 28.5.08, vide M.No.3112 dt. 28.5.08.

(viii) Produce all details of cheque or cash of said amount of Rs.5 lacs for redemption of land 2nd sale deed by Ramu along with mortgage deed in original which was executed by said Ramu in f/o said Land Mortgage Bank at Gurgaon and same is duly recited as of yr. 2001 in said mutation No.3112 dt. 28.5.2008.

The trial Court vide order dated 15.03.2016 allowed the aforementioned application by directing the petitioner-defendant to deposit ₹200/- at own responsibility which was deposited on 16.03.2016 vide receipt No.5222. On 15.03.2016, two DWs were examined and bailable warrant of DW Mangat Ram, Lamberdar was received back served but he did not turn up, therefore, fresh bailable warrants were issued in the sum of ₹10,000/-. The case was adjourned to 30.03.2016 for defendants' evidence.

However, on 30.03.2016, the respondent-plaintiff moved an application (Annexure P-3) for recalling the order dated 15.03.2016. The same was contested on the premise that the witness sought to be produced is in tandem with amendment sought in preliminary objection No.2 of the written statement, which had already been rejected by the trial Court and upheld by this Court.

The trial Court on the basis of the aforementioned pleadings had erroneously allowed the application, which is not sustainable in the eyes of law, as the issues were framed prior to the application seeking amendment of the plaint. There was no objection to the DLF for summoning DW-9 but during this statement it surfaced that the relevant record was in the custody of the Incharge of the Accounts Department, Arun Bhagat. No prejudice or harm would be caused in producing the aforementioned record. The order dated 15.03.2016 was passed in the presence of counsel of the respondent-plaintiff. The trial Court had erroneously ignored the fact that in the pleading of the suit, it is nowhere mentioned by the plaintiff that the plaintiff is an associate of DLF company. However, PW-1, S.C. Ansal came out with an explanation that the defendant was an associate company of DLF. This fact was reiterated by them before the Court in reply to the application for amendment. The procedural law is not to be tyrant but a subservient for meeting ends of justice.

Provisions of Order 16 Rule 18 CPC were referred to submit that the Court had suo motu power to summon the witness as a court witness to ascertain the truth, thus, urges this Court for setting aside the order under challenge.

Per contra, Mr. Chetan Mittal, learned Senior Counsel assisted by Mr. Harsh Bunger, learned counsel appearing for the respondent submitted that the order under challenge is perfectly legal and justified. On comparison of list of witnesses and as well as the proposed amendment sought to be incorporated in the preliminary objection No.2 of the written statement shown during the course of hearing is the identical one, therefore, the evidence would have been beyond pleadings. It is in this background the application for recalling of the evidence was moved. The application for amendment was rejected and the revision petition bearing No.4217 of 2015 preferred before this Court was also dismissed after noticing the conduct of the defendant, for, the petitioner-defendant had been negligent in adjudication of the suit by seeking adjournments, thus, urges this Court for dismissal of the revision petition with exemplary costs.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Gurinder Pal Singh. It would be apt to reproduce the statement of DW-9, Arvind Singh, order dated 15.03.2016 passed on the application for summoning the witnesses and zimni order dated 15.03.2016, which are as under:-

"***Statement of Arvind Singh, DW-9***

......I have seen the accounts after receipt of notice from the

Court which were seen by me in my office after summoning the same from accounts department. Sh. Arun Bhagat is the head of department to which both the above accounts belong. I, in the capacity of being in Legal Department of DLF, used to see the detail of these accounts of these companies in my office. Who maintains specifically the accounts of these companies I cannot say. I only directly talk to Head Arun Bhagat. Arun Bhagat's office is also at Arjun Marg address.

Ques. Whether you could say anything 2 cheques No.479101 and 512240 which are incorporated in sale deed Ex.DW2/2 were the cheques which being earlier in time would have been incorporated in sale deed Ex.P10?

Ans: Both the sale deeds are separate and purchase is also separate, so the earlier cheques are not adjusted in Exh.P10.

Xxxxx by Sh. J.K. Dang, counsel for plaintiff.

I was not involved in the purchase and sale of land of this case. It is correct hat if the incumbrance is disclosed prior to sale to the DLF company/its associates, then they insist of removing the same before the sale deed and only thereafter the sale deed is executed. It is correct that an agreement Ex.P6 was executed by one S.S. Dabra and the plaintiff regarding land consolidation and accordingly Vikram Co. used to give funds to S.S. Dabra for land purchase (consolidation and S.S. Dabra were to use the same for the benefit of plaintiff and other companies which were nominee of Vikram companies.

Who has paid the money for redemption I did not know, but we did not pay. It is correct that S.S. Dabra has made Dharampal as its power of attorney vide Ex.PW3/1."

Order dated 15.03.2016

Present: Shri J.K. Dang, counsel for the plaintiff.

Sh. D.N. Mangla, counsel for defendant.

Two DWs are present and examined. Bailable warrant of DW Mangat Ram, Lamberdar received back served but he did not turn up despite service of bailable warrant. Let fresh bailable warrant of DW Mangat Ram, Lamberdar in the sum of Rs.10,000/- with one surety in the like amount for the date fixed. Now the case is adjourned 30.03.2016 for evidence of defendants to be brought at own responsibility.

***Zimni order dated 15.03.2016**.*

Exp. Fee Rs.200/- be deposited own responsibility

sd/-
(Rajesh Sharma-II)
Addl. Civil Judge (Sr. Divn)
Gurgaon
15.3.16"

On perusal of the zimni order dated 15.03.2016, list of witnesses and the order dated 15.03.2016 allowing the summoning of the witnesses and as well as the statement of DW-9, I am of the view that no occasion arose for the respondent-plaintiff to move an application for recalling of the order dated 15.03.2016, for, the evidence sought to be placed on record was in tandem with the stand taken in the unamended written statement. The petitioner-defendant is to lead evidence to belie the claim of the plaintiff by summoning the record through the office of DLF as the entire transaction was documentary. In other words, it is a case of documentary evidence and not a simpliciter suit for recovery on the basis of pronote or dishonouring of cheque. Had the DW-9 produced the record, there would not have been any objection to the DLF. Cause of action accrued to the petitioner only when DW-9 feigned ignorance with regard to the availability of the record. It is in that background the application was moved, which has been allowed.

The finding of the trial Court that the records sought to be produced through the testimony of the head of account is in consonance with the amendment which has been rejected, is wholly erroneous. In fact, it is in consonance with the stand taken in the written statement. For the sake of brevity, paragraph No.2 of the preliminary objection in the written statement reads as under:-

> *"2. That the plaintiff has concealed the true and material facts from this Hon'ble Court, so he is not entitled for discretionary relief of this Hon'ble Court. It is submitted that the plaintiff entered into an agreement to sell in respect of land 11 kanals 3 marlas situated in Sector 76, Gurgaon for sale consideration of Rs.50 lacs per acre in the year 2005 with the defendant and Rs.7 lacs were received by the defendant at the time of execution of the agreement to sell but the plaintiff did not turn up to perform its part of the agreement and in the meanwhile the rate of the land became rise. The plaintiff had also issued two cheques of Rs.15 lacs each and one cheque of Rs.20 lacs in favour of the defendant and it was also settled between them with the help of broker Mr. Charanjit that the*

plaintiff will purchase the aforementioned land for a sum of Rs.Two Crorers twelve lacs and thirty four thousand and the amount of Rs.57 lacs which was received by the defendant at the time of earlier agreement shall stand forfeited. However, some cheques have been shown in sale deed, so in this way the plaintiff is not entitled for discretionary relief of the Hon'ble Court."

Pleadings have to be concise as per the provisions of Order 6 Rule 2 CPC. The evidence is not required to be pleaded and it can only be explained by bringing on record evidence. In my view, moving of the application (Annexure P-3) was nothing but to delay the adjudication of suit but the order under challenge had not taken care of the aforementioned aspect but was based on technical objection which is not sustainable in the eyes of law and is without jurisdiction.

As an upshot of my finding, the order under challenge is set aside and the revision petition stands allowed.

(AMIT RAWAL)
JUDGE

April 16, 2018
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No