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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-414-2018

Date of decision : 24.01.2018

Sanjay Kumar Karan

... Petitioner(s)

Versus

Sulekha and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Arora, Advocate
for the petitioner.

AMIT RAWAL, J. (ORAL)

Notice of motion.

Mr. Deepak Girotra, Advocate, who is present in Court, accepts notice on behalf of respondent No.1 and filed his memo of appearance. The same is taken on record.

The petitioner-plaintiff is aggrieved of the impugned order dated 15.01.2018, whereby an application moved by the petitioner-plaintiff for not allowing the defendant No.1 to produce the additional evidence, has been dismissed.

Mr. Amit Arora, learned counsel appearing on behalf of the petitioner-plaintiff submits that the marriage between the petitioner and defendant No.2 was performed on 27.05.1992. Defendant No.1 had been asserting before the Department to be wife of the petitioner-plaintiff, necessitating him to file a suit for declaration. In the aforementioned suit,

respondent No.1 filed a written statement and set up a counter claim claiming declaration that she is lawfully wedded wife of the petitioner-plaintiff. The trial Court on the basis of the variance, framed the following issues:-

1. *Whether the defendant is the legally wedded wife of the plaintiff as alleged in the counter claim and written statement? OPD*
2. *If issue No.1 is proved in favour of the defendant, if so to what effect? OPD*
3. *Whether the plaintiff is entitled to the decree of declaration and permanent injunction as prayed for? OPP*
4. *Whether the suit is not maintainable in the present form? OPD*
5. *Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD*
6. *Whether the suit is bad for non-jointer of the necessary parties? OPD*
7. *Relief.*

Since the counter-claim is set up, the defendant(s) led the evidence in the first instance and closed the evidence on 03.12.2015. During the pendency of the aforementioned suit, an application was moved by the petitioner-plaintiff to implead Mala Sinha as defendant No.2. The said application was allowed vide order dated 06.12.2017 with costs of ₹25,000/- to be paid to the respondents-defendant No.1 and liberty was granted to defendant No.2 to cross-examine DW-1 Sulekha and DW-3 Anuj Kumar Verma. However, on 12.12.2017, defendant No.2 filed the written statement and the trial Court found that no new issue was required to be framed and adjourned the matter for 19.12.2017. On 19.12.2017, an application was moved for framing the issue by invoking the provisions of

Order 14 Rule 5 CPC and also for recalling of the order dated 06.12.2017. The matter was listed for filing the reply to the application for 22.12.2017. On 22.12.2017, the matter was adjourned to 08.01.2018. On 08.01.2018, cross-examination of DW-1 Sulekha and DW-3 Anuj Kumar Verma was recorded, but without seeking permission of the Court, respondent/defendant No.1 submitted an affidavit of Vimal Kumar Verma as defendant No.5, the same was objected to. In the meantime, an application in hand was moved, which has erroneously been rejected. He further submits that once the evidence of defendant No.1/counter-claimant was closed vide order dated 03.12.2015, the counter-claimant could not be permitted to lead evidence in the manner and mode, indicated above as it tantamounts to filling up of the lacuna, which is not permissible in law, thus, prayed for setting aside the impugned order, under challenge.

Mr. Deepak Girotra, learned counsel appearing on behalf of respondent No.1 submits that order dated 12.12.2017 giving the right to the counter-claimant to lead evidence has never been challenged and the same still holds the field. Even otherwise, from the perusal of the issues, defendant No.1 being a counter-claimant, definitely has a right to lead evidence to one led by the plaintiff, who is defendant in the counter-claim by way of rebuttal evidence, thus, urges this Court for dismissal of the present revision petition.

I have heard the learned counsel for the parties and appraised the paper book and of the view that filing of the counterclaim is not controverted, much less, order dated 03.12.2015 (Annexure P-1) and as well as order dated 06.12.2017. It would apt to reproduce the orders dated 12.12.2017, 19.12.2017 and 08.01.2018, which read thus:-

"Order dated 12.12.2017"

Respondent No.2 has appeared in person with Mr. Puneet Manchanda, Advocate, learned proxy counsel appearing on behalf of Mr. M.L. Arora, Advocate. Written statement has also been filed. Copy supplied. From the pleadings of the parties no new issue is made out. Amended title has also been filed and has been taken up on record. On 11.12.2017 another application was filed on behalf of the petitioner. Copy supplied. Adjourned to 19.12.2017 for evidence of counter claimant and for filing reply to this application if any and also for arguments.

Order dated 19.12.2017

Case received by way of transfer. It be checked and registered. Sh. M.L. Arora, Advocate has made a statement that he only wants to cross-examine Sulekha, defendant No.1 and her brother Anuj Vema,.

An application for framing issue under Order 14 Rule 1 CPC as well as reply to the application under Section 151 CPC seeking recalling the order dated 06.12.2017 have been moved. Copies to the opposite counsel. An adjournment has been requested by counsel for the petitioner for filing reply to the above-said application. Heard. Granted. To come up on 22.12.2017 for filing reply to the application for framing issue under Order 14 Rule 1 CPC. Arguments on both applications shall also be heard on the date fixed.

Order dated 08.01.2018

Cross-examination of DW1 Sulekha and DW3 Anuj Kumar Verma have been recorded completely. Affidavit of DW5 Vimal Kumar Verma has been tendered. Counsel for plaintiff has objected that the defendant No.1 cannot lead any more evidence as the evidence already stood closed earlier. Besides plaintiff raised objection that this witness is not his brother. The witness showed his Aadhaar Card. The copy of which has been retained on the file and one copy of the same has been

supplied to the plaintiff for verification. For recording the statement of this witness, to come up on 15.01.2018. Plaintiff is also at liberty to produce document to show that this witness is not his brother."

On perusal of the order dated 12.12.2017, it is evident that the matter was listed for evidence of the counter-claimant and also filing the reply to the application and on 08.01.2018 when the defendant(s)-counter-claimant wanted to lead evidence owing to the fact that the plaintiff's application for impleading Mala Sinha as defendant No.2 was allowed subject to the cost of ₹25,000/- and permission was given to cross-examine DW-1 Sulekha, DW-3 Anuj Kumar Verma, respectively. In my view, since both the parties are at loggerhead and have filed claim and counter-claim, leading of the additional evidence, would be a mix question of fact and law. Whatever the evidence respondent No.1/defendant would lead, the petitioner-plaintiff would have a right to cross-examine and the Court will examine the same at the time of hearing of the suit.

For the foregoing reasons, I do not find any illegality and perversity in the impugned order dated 15.01.2018, under challenge, much less, no ground is made out for interference and accordingly, the present revision petition is dismissed.

24.01.2018

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**